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SOCIAL SECURITY AND INCOME SECURITY PROPOSALS

HEARING

BEFORE THE

SUBCOMMITTEE ON
SOCIAL SECURITY AND FAMILY POLICY

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

JULY 14, 1988

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SOCIAL SECURITY AND INCOME SECURITY PROPOSALS

THURSDAY, JULY 14, 1988

U.S. SENATE, SUBCOMMITTEE ON SOCIAL SECURITY AND FAMILY POLICY OF THE COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 1:32 p.m. in room SD–215, Dirksen Senate Office Building, Hon. Daniel Patrick Moynihan (chairman of the subcommittee) presiding.
ing.

Present: Senator Moynihan.

[The prepared statement of Senator Moynihan appears in the appendix.]

[The press release announcing the hearing follows:]

[Press Release No. H–30, July 1, 1988]

FINANCE SUBCOMMITTEE TO HOLD HEARING ON SOCIAL SECURITY AND OTHER PENDING INCOME SECURITY PROPOSALS

WASHINGTON, D.C.—Senator Daniel P. Moynihan, (D., New York), Chairman of the Senate Finance Subcommittee on Social Security and Family Policy, announced Friday that the Subcommittee will hold a hearing on a number of social security and income security proposals.

The hearing is scheduled for Thursday, July 14, 1988 at 1:30 p.m. in Room SD–215 of the Dirksen Senate Office Building.

The bills and amendments to be addressed at this hearing include:

S. 2441, a bill sponsored by Senator Moynihan to require the Social Security Administration to provide annual personal earnings and benefit statements to workers covered by social security; the social security amendments approved by the Ways and Means Committee on June 22, 1988; other social security amendments proposed by the Administration in a June 6, 1988 communication to the Senate; and S. 2461, a bill sponsored by Senator Moynihan to extend and improve the foster care independent living program, which is currently scheduled to terminate on September 30, 1988.

The Subcommittee will also hear testimony on the issue of extending the current moratorium on implementation of regulations proposed by the Administration on December 14, 1987, with respect to the AFDC emergency assistance program. The proposed regulations would have limited the use of the emergency assistance program in providing emergency housing for low income families with children. The current moratorium on the implementation of the regulations will expire September 30, 1988. Testimony will also be heard on pending legislation to extend the moratorium on AFDC quality control sanctions, which expired June 30, 1988.

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM THE STATE OF NEW YORK, CHAIRMAN OF THE SUBCOMMITTEE

Senator MOYNIHAN. A very good afternoon to our panelists and our guests. We are holding, of course, a hearing of the Subcommittee on Social Security and Family Policy. We have several tasks before us.

The first is that we are here to consider the very specific provisions affecting Social Security, which of course includes AFDC and other programs, that are involved in the Technical Corrections Bill.

We will try to hold another hearing on July 29 to consider my proposal to require the Secretary of Health and Human Services to provide periodic statements to individuals about the state of their Social Security accounts. We are a half-century or more into Social Security's trouble-free existence so far as recipients are concerned. There has never been a check go out a day late or a dollar short, you might say.

And yet, to this day, a Yankolovich poll recently established that a majority of nonretired adults in this country do not think that Social Security will be available for them when they retire or be available to them in the amounts that they have reason to expect. So, it has occurred to us that this may have something to do with the fact that people begin paying into Social Security very early in life, but never hear about their contributions.

I was paying Social Security when I was 15 years old, I think, in World War II; and I still haven't gotten any money from them, nor have I heard from them since. [Laughter.]

There's this feeling, I think, that they are taking your money and it just disappears. The thought of getting an annual statement—phasing this in—to tell you where you are would seem to me to be a reasonable idea. It just doesn't do for that large a proportion of our population to have no faith in the Government's word. Or maybe it does do—I don't know—but it puzzles me. I would like to see something done about it, the more so now that our Social Security Trust Funds are in such ample circumstances.

The Funds' reserves are growing at the rate of $109 million a day. We will have a $100 billion surplus at the end of this year; I believe—reserve is a better term. And, as was said in testimony we heard in New York recently, the Director of Research at the Dreyfuss Corporation referred to the soon to be appearing reserves as "mind boggling." I think that may be the case.

So, in that context, giving some accounting is all the more in order.

We have three specific matters before us today. We want to talk about extending the moratorium on the AFDC quality control fiscal sanctions, which Senator Evans will address.

We want to talk about delaying the implementation of proposed HHS regulations that would curtail the States' use of AFDC emergency needs funds. This is a question which works both ways. If I am correct, and if I am not, Margaret will correct me—the present law permits a person to be placed in emergency housing for 30 days in a 12 month period. Is that right? She says yes. That is the statute, but the current regulations permit us to keep people in the Martinique Hotel for 12 months. Well, that is 12 months in hell. Any society that lets children grow up in the circumstances of the welfare hotels in New York City—and I can't speak for elsewhere—has invented forms of degradation and punishment that no other society has known. At least, that is my view.

Then, of course, we want to reauthorize for another year the Foster Care Independent Living Program, which we began in 1985.

Then, finally, there are a number of minor and technical amendments which need to be dealt with.

I have a statement that I will place in the record.

Senator Evans has not arrived yet, and I am told he will be late. We will begin without him; if our panelists will understand that, when he does arrive—we are all late today—we will interrupt to hear his testimony.

So, will Mr. Michael C. Carozza, Deputy Commissioner for Policy and External Affairs, Social Security Administration; and Mr. Joseph F. Delfico, Senior Associate Director, Human Resources Division, General Accounting Office please come forward.

We welcome you both. We will follow our normal pattern of hearing you in the order listed. Mr. Carozza will be first; we have your statement and we will place your statement in the record. Perhaps you would like to summarize it. Take your time, but rather than read it, you might just like to tell us what you have in mind.

STATEMENT OF MICHAEL C. CAROZZA, DEPUTY COMMISSIONER FOR POLICY AND EXTERNAL AFFAIRS, SOCIAL SECURITY ADMINISTRATION, BALTIMORE, MD, ACCOMPANIED BY MARY ROSS, DIRECTOR, LEGISLATIVE REFERENCE STAFF

Mr. CAROZZA. Thank you, Mr. Chairman. I am pleased to have this opportunity to discuss the Social Security Administration's Personal Earnings and Benefits Estimate Statement initiative and also a variety of Social Security legislative proposals.

I particularly want to mention some proposals not included in the Ways and Means Committee bill, especially one which is designed to improve Social Security protection for adopted children. Commissioner Hardy would be here today except for a long-standing commitment to be out of the country. However, Mr. Chairman, all of us in the Social Security Administration appreciate your leadership in restoring both Social Security's financial stability and public confidence in the program.

Informing the public about Social Security's financial soundness and its value to workers of all ages has been among the Commissioner's highest priorities. One such effort is a national public advertising campaign, in partnership with the Advertising Council.

Another major effort will begin next month when Social Security begins issuing a new Personal Earnings and Benefit Estimate Statement to people who request them. The earnings statement we currently furnish upon request has the primary objective of furnishing information about the earnings on a worker's record in each of the last three years.

The new statement has a much broader objective. It contains a year-by-year display of earnings since 1951. This will allow a worker to make sure that his or her earnings record is correct so that his or her future benefits will be based on all of his or her covered earnings.

It also provides workers with comprehensive benefit estimates, both disability and survivors estimates and retirement benefit estimates at age 62, age 65, and also age 70. Finally, the new statement will help people do their own financial planning. They will

learn what Social Security can and cannot do so that they will be better able to plan supplemental sources of retirement income.

We estimate that about six million people each year will ask for the new earnings statement, and that is about double the number of people who request them now. I think it is also important to mention that the new statement will cost only about 35 cents, including postage. This is the same kind of product that some advertisers have tried to sell to workers for $10.00 a copy and more.

I would like to turn now to the Social Security legislative provisions.

Senator MOYNIHAN. I would just like to say that it continues to amaze me how well managed the Social Security Administration is, that you can get a document with that kind of information out for 35 cents. That really is a tribute to the third generation, I think, of administrators such as yourself.

I would note that in your introduction, you talk about rebuilding confidence in Social Security. I wonder if you would think about it and tell us something about it later? What do you know about that subject?

My impression is that the program has been controversial from the beginning. The first polls I recall seeing on the subject were included in the 1977 Social Security Commission's report—and they were as discouraging as the most recent ones. Something has resisted confidence in this program; but, please, go ahead.

Mr. CAROZZA. All right. I will turn now to the Social Security provisions that the Ways and Means Committee agreed to in its markup of H.R. 4333, the Technical Corrections Act of 1988. I will mention only a few provisions now because my full statement contains a more detailed discussion, and you have already entered that into the record.

Five of the Social Security provisions in the Administration's legislative package for fiscal year 1988 were included in the bill, and it also contains several other provisions that we either support or have no objection to. There are, however, several provisions in the bill which we do find objectionable.

One would require the Secretary to establish a blood donor locator service to furnish public health agencies and blood banks with the most current address that Federal records show for donors who are infected with the human immunodeficiency virus, the cause of AIDS. We oppose this provision because it would unnecessarily duplicate current procedures for locating infected blood donors, impose additional administrative burdens on both blood banks and the agency, divert resources that could be used more effectively in disease prevention and treatment; and it could adversely affect attitudes toward voluntary blood donation.

The bill would also require payment of disability benefits following a favorable Administrative Law Judge decision where the Appeals Council review of the decision is delayed beyond 110 days. While we agree that extended delays may cause hardship, the solution is not mandatory processing times; rather it is improved administrative practices, which we are working on diligently.

There are also four proposals that we sent to the Congress on June 6 which had not been advanced in time for the Ways and Means Subcommittee markup on Social Security, but which your

committee might wish to consider. Let me just mention one of them now.

That provision would treat an adopted child like the worker's natural child so that benefits would be payable without a special test of dependency. Although this provision does involve some cost—about $10 million initially, and $80 million or so over a five-year period—we believe it is justified because it would strengthen Social Security protection for adopted children and has the potential for strengthening family life.

In conclusion, Mr. Chairman, I thank you for this opportunity to discuss both the new Personal Earnings and Benefit Estimate Statement and the proposed Social Security legislation. I believe that the new statement represents a major improvement in the quality of service that we provide to the American public.

With regard to the legislative proposals, I want to note that the proposals tentatively approved by Ways and Means would cost about $20 million in fiscal year 1989 and some $170 million over five years. In light of the bipartisan budget agreement, the Administration does believe that proposals that increase costs need to be accompanied by offsets.

That concludes my brief statement, and I would be happy to answer any questions now.

Senator MOYNIHAN. We thank you very much, sir. If you don't mind, we will follow the pattern of our committee and ask Mr. Delfico if he would speak next. I do have a number of questions after that.

[The prepared statement of Mr. Carozza appears in the appendix.]

STATEMENT OF JOSEPH F. DELFICO, SENIOR ASSOCIATE DIRECTOR, HUMAN RESOURCES DIVISION, GENERAL ACCOUNTING OFFICE, WASHINGTON, DC, ACCOMPANIED BY BILL STAAB, EVALUATOR AND SHARON WARD, EVALUATOR, GENERAL ACCOUNTING OFFICE

Mr. DELFICO. Thank you, Mr. Chairman. Again, with your permission, I would like to submit the full testimony for the record and present a very brief summary.

Senator MOYNIHAN. It will be included in the record, and then you just proceed as you wish.

Mr. DELFICO. With me today are Mr. William Staab and Ms. Sharon Ward, who have worked in this area.

Senator MOYNIHAN. Would you like them to come to the table?

Mr. DELFICO. That won't be necessary. If you have some questions that deal with their projects, clearly they can come to the table for that.

Senator MOYNIHAN. Questions you can't answer?

Mr. DELFICO. Right. I will be first to bring them up. [Laughter.]

I want to inform you today about two projects that deal with the notion of providing a periodic personal earnings and benefits statements to workers covered by Social Security. At the outset, I would like to say that we believe that there is a real need to provide individuals with better information about their Social Security earnings and benefits.

Our position stems from the two studies that we have recently completed, one dealing with private pension plans—that is somewhat connected to your idea—and the second dealing with uncredited earnings in the earnings statements of individuals.

I will briefly describe each and show how each one of these projects are related to the personal benefits statements that you are considering in your committee.

Our work with private pension plans raised questions about whether many workers are planning adequately for retirement. Few workers receive individualized benefits statements describing their pension status and benefits, although workers do receive general plan information and summary plan descriptions required by ERISA.

Our review indicated that millions of workers don't understand their own plan's early and normal retirement eligibility requirements as described in their plan documents. Without adequate information about these plans, obviously workers are going to make some pretty bad judgments about retiring. For example, among workers in defined benefit plans with an early retirement option in 1983, 41 percent were incorrect about their early retirement eligibility. That is an estimated six million workers according to our projections from the data base we use.

Senator MOYNIHAN. This is private plans?

Mr. DELFICO. Private plans, yes. They were asked the question: Do you have an early retirement provision in your plan? And 41 percent were wrong; they were incorrect about that.

We also found that workers did not know when normal retirement benefits would be available to them. Of the workers in defined benefit plans in 1983, about 72 percent were not correct about when they would be eligible for normal retirement benefits.

Senator MOYNIHAN. This is not the kind of situation that someone such as I am in, which is to say: What will be my Social Security benefit at age 65? The answer is that I don't know, but I can't change it. By the time I am 65, they will tell me.

Mr. DELFICO. Yes.

Senator MOYNIHAN. Which is not a hopeless position. You know when retirement will happen; you're not sure what benefit you will get. But these people didn't know their retirement age might be 65?

Mr. DELFICO. In these cases, we were surprised at the numbers, the 72 percent.

Senator MOYNIHAN. Yes, that surprises me. Some would say, "let them figure it out." I know when retirement is coming, but not to know it is coming?

Mr. DELFICO. Yes. I think it would go up an order of magnitude. The numbers would even get larger if they were asked what their pension benefits would be.

Senator MOYNIHAN. Oh. I wouldn't expect people to know, unless they have a good deal of knowledge; but not to know when retirement begins?

Mr. DELFICO. Yes.

Senator MOYNIHAN. Maybe people are more interested in their lives than we think, but they are not thinking about that.

Mr. DELFICO. Maybe that is true. We have looked at it as an aside to see if there is any variation with age or nearness to retirement. There was a slight variation but not as large as you would expect.

Senator MOYNIHAN. Not as large as you would have thought?

Mr. DELFICO. No. A 35-year-old had about the same probability—maybe a slightly higher probability—of guessing wrong than a 55-year-old.

Senator MOYNIHAN. Now, that is a very different pattern from the Peter D. Hart studies of confidence in Social Security. It was very age skewed. As you got into your 50's, people—perhaps on the theory that there are no atheists in foxholes, as they used to say in World War II—who had become believers knew, but people in their 30's and 40's just didn't know.

Mr. DELFICO. Just to add an anecdote to that, I had a call from a 20-year-old yesterday who was thinking of changing jobs and wanted to work in my group in the Social Security area so he could learn more about his Social Security benefit because he didn't trust he would receive them when he retired. [Laughter.]

I was surprised to hear that from one of our staff, in any case.

Senator MOYNIHAN. Even at the GAO?

Mr. DELFICO. Even at the GAO. Yes. [Laughter.]

A second study that I would like to bring your attention to is one that you may be familiar with. We looked at workers' eligibility and entitlement to Social Security benefits; and as you know, they are based on earnings records that are kept at the Social Security Administration.

If the Social Security Administration fails to record all or part of these earnings, the Social Security benefits it calculates obviously could be too low. I would like to say at this point that the problem is not, by and large, one of the Social Security Administration's. It is employers who don't properly send the forms, whether they be W-2s, W-3s, or 941s to IRS; and, hence, they are not recorded.

But the bottom line is that the benefits are not recorded. Our study looked into this and found that the SSA has recorded about $58.5 billion in earnings less than IRS recorded through the tax system, meaning there is a shortfall.

Senator MOYNIHAN. Can you direct me to that in your testimony, sir? What page?

Mr. DELFICO. Page 4. I am sorry; we are on page 4.

Senator MOYNIHAN. Yes. So, that is a six or seven year period?

Mr. DELFICO. Six years, from 1978 through 1983.

Senator MOYNIHAN. So, we are losing $8 billion a year in postings?

Mr. DELFICO. Yes. Not necessarily taxes, but these are earnings postings.

Senator MOYNIHAN. Right. $8 billion? Do you want to give me a percentage?

Mr. DELFICO. This is less than one percent, eight-tenths of one percent of all the postings.

Senator MOYNIHAN. Not bad.

Mr. DELFICO. Not bad, except there are a number of people in this category that don't know their earnings have not been recorded.

Senator MOYNIHAN. Let's see now. That is not eight-tenths of one percent of everybody's earnings? It is 100 percent of somebody's earnings.

Mr. DELFICO. Right. The reason I brought this particular work up is that if there are earnings statements sent to individuals, we feel that the earnings statements will help——

Senator MOYNIHAN. When there is no reporting? Could you press that a bit?

Mr. DELFICO. Yes.

Senator MOYNIHAN. This is not eight-tenths of one percent of everybody's payroll. It is just X number of people who get nothing and I see some nodding from some of your colleagues—posted for some or all of their earnings.

Mr. STAAB. Right. It is eight-tenths of one percent of all the money that is——

Senator MOYNIHAN. But it is 100 percent of the earnings of a lot of people?

Mr. DELFICO. Right.

Mr. STAAB. It could be 100 percent for a lot of people.

Senator MOYNIHAN. Yes. There would be no benefit under such circumstances.

Mr. DELFICO. In one year.

Senator MOYNIHAN. Oh, in one year? Yes. You can see small, marginal enterprises and just no report at all.

Mr. DELFICO. Right. Earnings statements, if sent to individuals, would then probably highlight this. If you saw a string of earnings for 40 years with a couple of zeroes in it, you would be alerted to the fact that there was misposting.

Senator MOYNIHAN. Right.

Mr. DELFICO. And we felt that this was an ideal mechanism for identifying the problem that we foresee or that we have seen at the Social Security Administration, which I understand is now being reconciled.

IRS and Social Security have reached an agreement on how to reconcile the uncredited earnings, and they are now working toward that goal.

Senator MOYNIHAN. Could I ask you, Mr. Carozza, how that would work?

Mr. CAROZZA. Basically, what we are going to do is: IRS will process all of these cases where there is a discrepancy between what employers report to us and what they report to IRS.

Senator MOYNIHAN. You can do that?

Mr. CAROZZA. Yes, sir.

Senator MOYNIHAN. How do you know? What triggers this?

Mr. CAROZZA. We get wage reports, and they do. When there is a discrepancy, SSA and IRS will now jointly undertake to work out why the two of them are different.

Senator MOYNIHAN. I believe you, but you check each other's lists?

Mr. CAROZZA. Yes, sir. That is what we will be doing.

Senator MOYNIHAN. Machines do it?

Mr. CAROZZA. In fact, we are sending a letter up to you and other interested members with the full text of the agreements.

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Senator MOYNIHAN. All right. This committee would like to get your best judgment of how many individuals have their earnings not reported to SSA at all. You know, we have the eight-tenths of one percent, and we know that is system-wide.

But would there be 100,000 or 300,000 people who would have significant earnings not reported? If I could just ask if you would give us your best judgment on this.

Mr. DELFICO. Our rough estimate was, I think, about 9.7 million people could have been affected through 1983.

Senator MOYNIHAN. 9.7 million? And that is the basis——

Mr. CAROZZA. Mr. Chairman, our figures show we have about 650,000 cases per year, for the most recent years.

Senator MOYNIHAN. That is what I was thinking, something like that in cumulative figures. Give us some more description, all right?

Each year, there are approximately 650,000 FICA wage discrepancies; that is, situations where an employer reports FICA wages to IRS, and SSA either has no record of a wage report from that employer or the amount of wages reported to SSA was less than the amount reported to IRS. We do not know the number of employees involved in these discrepancies. However, based on our experience in reconciling these wage discrepancies, we think that the earnings records of about 2 million workers a year would be affected.

You are both familiar with the notion of the dual economy where people get into different patterns of employment. One person goes to work for the Bell Telephone Company—or they used to—or the GAO, and they work there for 40 years; and they acquire all manner of entitlements and the records are straight and so forth.

Then, other people just go from this job to that job and another job, and their weekly earnings might look comparable, but nothing accumulates for them. Economists have been noticing that pattern, and this would be part of it, I think. All right. Do you both follow me?

Mr. DELFICO. Yes.

Mr. CAROZZA. Sure. Go ahead.

Mr. DELFICO. In summary, Mr. Chairman, there are two or three items here we would like to raise and bring to your attention that would have to be considered if you were going to go ahead and establish a system at Social Security for sending out earnings and benefits statements.

The first issue that we would like you to consider is the fact that, obviously, there is going to be a cost problem here and a staffing problem, if this was done immediately. And from what you said earlier, you are considering a phased situation, which we agree with. We think that makes much more sense, and it would not put an undue burden on an agency that has already experienced staffing cuts in the past four to five years.

Senator MOYNIHAN. I was going to ask about those, too.

Mr. DELFICO. There is another issue, and that deals with mailing addresses. To the best of our knowledge, they may be considered tax information—mailing addresses may be. The Social Security Administration does not have mailing addresses for workers; it does for beneficiaries, but not for workers.

To gain access to mailing addresses for 120 million or so workers, one would have to get the mailing addresses through IRS. That may require legislation. I am not sure of that.

Senator MOYNIHAN. Oh, yes. There is a whole range of questions about confidentiality, but it doesn't trouble me to ask the IRS for the addresses of people we are going to give information to about monies that the Treasury is holding for them. If it troubles other people, we will hear about it, but it is a good point, a fair point.

Mr. DELFICO. It doesn't seem insurmountable; it is just a hurdle that would have to be overcome.

Senator MOYNIHAN. Right.

Mr. DELFICO. And finally, there will be some additional workload when, as Mr. Carozza said, these earnings statements are mailed out. These statements are going to raise questions, and there will be more of a workload at the regional offices and at the teleservice centers where they have to answer phone queries regarding their statements. Again, though, if it phased and it is done over a long period of time, we don't see a major problem in this particular area. By and large, just to summarize, we do support the idea; and we do think that, given enough time, a system will be able to be developed that will be cost effective and will address the issues that you are trying to address here. That concludes my summary. I will be happy to answer any other questions you might have.

Senator MOYNIHAN. Fine.

[The prepared statement of Mr. Delfico appears in the appendix.]

Senator MOYNIHAN. Let me just go back then first to Mr. Carozza. Let's just stay with this subject for a minute. We would like some advice from the GAO and from the SSA about phasing in. I mean, we propose to be in business for a very long while—the United States Government—and there is no need to make precipitous changes in anything with regard to Social Security. Let's see; I will check to see if Mr. Carozza was paying attention when he was working for Senator Domenici. We have phased in a 67-year age retirement by the year 2027. Is that about right?

Mr. CAROZZA. Yes.

Senator MOYNIHAN. You know, easy does it; it doesn't have to happen overnight. With phasing in a payment statement, obviously you will want to start with persons nearing retirement. Should we think of doing this in 2 years or 20? You might want to tell us, the first time you get that notice, if you are likely to call up about it; but maybe the day will come when there are fewer telephone calls because people have this record, and they don't need to call up and find out what is going on.

Certainly, it will create feedback in terms of correcting errors, which is not to be dismissed if we have 600,000 or so a year. I have a particular interest I guess in this dual economy phenomenon, that is the people who will most need Social Security. They are least likely to have a pension arrangement of any kind and are least likely to be with employers who are meticulous in their accounts, such as those done by larger established firms.

But we mean to do this, and the SSA has been very cooperative. I don't want to be rambling about it, but it is a puzzlement that we have so little confidence in so central an institution as Social Security. I am told—and if I am back here next year, I am going to

have hearings about some transnational experiences—that the Canadian fund, which is called the Canada Pension Fund, had very low levels of confidence until they went into a partially funded system after a Royal Commission met in 1966. This, in effect is what we have done. So, we will see.

I see you took a few notes about the few things we asked.

On the question of pain, on page 6 of your statement, Mr. Carozza, where are we on the work of the Commission on the Evaluation of Pain, which I like to think I had something to do with establishing. Are you asking us to extend the temporary pain provision?

Mr. CAROZZA. Yes, sir. We have a couple of policy issues here. We are not going to get the pain studies done for another couple of years, and what we are looking at is some kind of an extension into the 1990s to allow us time to finish those and get a better handle on this.

Senator MOYNIHAN. Now, let's hold on here. You want us to add this? This is not in the technical corrections bill. You want us to add it?

Mr. CAROZZA. That is correct.

Senator MOYNIHAN. I don't know what you want us to add; so you had better tell us and tell us in some detail quickly. All right?

Mr. CAROZZA. We need a standard in the law to ensure that the courts are consistent in their interpretation of pain.

Senator MOYNIHAN. Right. We gave you the commission. How do you recall the commission's report? We set up the commission on the evaluation of pain.

Mr. CAROZZA. Yes, sir. I would have to confer on that.

Senator MOYNIHAN. Feel free to do so.

Mr. CAROZZA. I have Ms. Mary Ross with me, who is head of our Legislative Reference Staff.

Senator MOYNIHAN. Ms. Ross, come forward. Let me just tell our guests here what the problem was. Now, I am going to have to be corrected.

We were being told the statute required physical evidence that would establish disabling pain. Any number of physicians—and if I may say, I think I took the initiative here—were saying: No, it is just not in the nature of medicine. The malingerer is a popular national figure; but as one doctor said to me: Let me take you up to the Payne Whitney Pavilion and walk you down the corridor of the $500.00 a day rooms. These rooms are paid for by the individuals who are in those beds, actually disabled with pain and, consequently, not at Palm Beach. They are not trying to avoid work here; they are in here because they hurt; and the doctor doesn't know why. And that was exactly the position of physicians when people were dying of a burst appendix and they had a stomach ache; and the doctor didn't know why, but there was something the matter with them. Now, I am convinced that is what the commission told you. Isn't that right, Ms. Ross?

Ms. Ross. We recognize the phenomenon. The commission did recommend that there be further studies or that we await the results of the studies.

Senator MOYNIHAN. What studies are going on? That is what the commission found. If there is anybody in the audience who knows

differently, tell me. What they found is that there is such a thing as disabling pain, for which there is no physical evidence; but it is always accompanied by changes in behavior. And any capable physician can say: You are not behaving the way you used to behave. You do not go out dancing at night. You have ceased, in fact, playing touch football. We have a celebrated story around this committee room about the man who couldn't work because of his bad back, and it turned out he was playing touch football while at home. We are talking about a fellow who stopped playing touch football because he hurts.

Ms. Ross. You are absolutely correct. They didn't feel they had come upon specific enough definition and understanding to write a new standard into the law.

Senator MOYNIHAN. All right.

Ms. Ross. They recommended at the time an extension of the statutory provision on pain that was already in the law, to allow time for completion and evaluation of recommended studies to pin down exactly how to evaluate chronic pain.

Senator MOYNIHAN. Let me tell you that you are going to have to hurry now. As I recall, the chairman was a doctor at Sloan Kettering. Is that right? Help. I want you to get in touch with that chairman, and I want to get a letter from her—if it is the person I remember—saying what you are proposing is in line with what the commission recommended.

Ms. Ross. The commission, I think, anticipated that we would by now have made further progress than we have.

Senator MOYNIHAN. Well, come on.

Ms. Ross. They anticipated a brief extension on the provision for evaluating pain.

Senator MOYNIHAN. If you want this, you had better do it right. Now, look, we are in a situation—sorry, Mr. Delfico, to keep you through this—where this Administration came into office, and it began disallowing disability claims in extraordinary numbers—at the level of brutishness, at the level where United States Attorneys ceased to defend the Government.

In the Southern District of New York, the United States Attorney said: I will not defend the Government in these matters any more. Now, I am not suggesting anybody here was involved with that, but it was not an admirable episode in the history of the Social Security Administration.

So, we put this commission together, and we asked you to proceed; and evidently, you are still malingering—I am sorry to use words like that. I want you to get hold of that commission chairman and get back to us and get back to us in writing and get back to us fast; we will be back here a week from Monday, and tell me what you want to do, why you weren't able to follow the schedule the commission had proposed, and if the chairman now thinks we ought to reconvene the commission briefly.

We want to help you, but be sensitive to this. You know, when the day comes that the United States Attorneys refuse to defend the Government, that is a strong message. What was the record? On appeal, about half of those cases were reinstated? Isn't that right? I mean, you had a 50 percent accuracy record; you threw people off disability. I am not trying to make any exaggerated

statements; half of them have been restored. And they said: What did you do that for? You are not a mean person. [Laughter.]

You don't like to inflict pain, do you? [Laughter.]

Do you have the records, Mr. Carozza?

Mr. CAROZZA. Mr. Chairman, when we come back before you in about two weeks, we will let you know where each of the studies stands.

Senator MOYNIHAN. And you might want to ask the chairman to poll the commission and give us a report on that, too.

Mr. CAROZZA. I would only add that the provision has already expired. We haven't completed the studies; and in the interim, we do need the extension so that the courts will apply the standard in a uniform manner.

Senator MOYNIHAN. We do want to help you, but we want to be sure you are being honest with us; and this is one area where we have not had the best relations.

We thank you both. We thank you, Mr. Delfico and Mr. Carozza.

Mr. CAROZZA. Thank you, Mr. Chairman.

Senator MOYNIHAN. And we have got some things coming from both of you.

[The information appears in the appendix.]

Senator MOYNIHAN. Senator Evans is still on the floor. So, we are going to move to our second panel today. Dr. Drew Altman, Commissioner, New Jersey Department of Human Services, Cranbury, New Jersey; Ms. Ruth Massinga, Secretary, Maryland Department of Human Resources, Baltimore, Maryland; and Mr. Robert Horel, Deputy Director, Welfare Program Division, California Department of Social Services, Sacramento, California.

Mr. Horel, we will follow our normal pattern, and hear testimony in the order that you appear. Dr. Altman, we welcome you once again to these hearings and this hearing room. We would like to place your statement in the record as if read, and perhaps you would summarize it.

STATEMENT OF DREW E. ALTMAN, PH.D., COMMISSIONER, NEW JERSEY DEPARTMENT OF HUMAN SERVICES, CRANBURY, NJ

Dr. ALTMAN. Mr. Chairman, it is good to see you again. Governor Kean, of course, sends his regards; and also these days his hopes that we will see a welfare reform bill.

Senator MOYNIHAN. We thank him, and will you tell him that both candidates for President, Mr. Bush and Governor Kean's colleague, Governor Dukakis, speaking to the NAACP yesterday and the day before, both endorsed the bill that passed the Senate. So, we have endorsements.

Dr. ALTMAN. Good. I appreciate the opportunity to testify today. Because the problem of homelessness has reached such serious proportions in our State, I would like to focus my remarks on the issue of emergency assistance here this afternoon. In dealing with the problem of homelessness over many years, there really is nothing that I have found more frustrating or more alarming than the proposed cutback in emergency assistance. It is not simply, frankly, the impact that that cutback would have, it would pull the rug out from under our entire emergency assistance program in New

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Jersey and cost us about $10 million in emergency assistance next year; but it is the spirit of the thing as well.

And I think the message that we see it sending to the States and to local governments is that the Federal Government is no longer interested or willing to serve as an equal partner with State and local governments in addressing this problem. A couple of months ago, I saw you in Brooklyn; and at that time I said that, to us, it looks like we are ships in the night on the issue. States are trying to do more—particularly my State—and HHS on this point is trying to do less. It is a big concern for us. In New Jersey, in the last year and a half, we have quadrupled our budget for emergency assistance and more than tripled the number of families served. So, we are now serving about 48,000 women and children a year, although we have modified EA to try and prevent homelessness in every way we can. For example, we now pay up to three months' back rent, three months' mortgage payments when they are in arrears and so forth. We still find that half of the families we serve through EA require some sort of emergency placement, and 90 percent of those families are placed in welfare hotels at the now familiar cost of about $1,500 a month.

I think we would all agree, and I am not going to bother to elaborate on it here today, that the welfare hotels, like the Martinique as you said, are the worst possible solution to the homeless problem. What we would like to do in New Jersey is fundamentally change our emergency assistance program so that rental assistance and family shelters and a variety of other alternative arrangements, such as family foster care and leasing arrangements and so on, become the lynch pins of our EA program. We would frankly like to get out entirely of the welfare hotel business; and we intend to try and do that. In accomplishing this, we view rental assistance as a particularly important approach. If we could convert our EA payments to rental assistance payments for the average family in New Jersey, we could support families for about a year and a half in an apartment of their own.

And during that time, we would involve that family in our welfare reform program and the Reach Program; the connection between emergency assistance and welfare reform really can be quite important. So, then we could work with them to get them off public assistance. We could do that within a year and a half or a year if we were providing rental assistance off of public assistance on a permanent basis. Recently, we actually had some experience with this. We converted EA to rental assistance for about 940 families whose emergency assistance benefits were running out; in a very short period of time, we found that we were successful in placing more than 700 of those families in apartments on either a transitional——

Senator MOYNIHAN. You can do that with the present monies, can't you? Ms. Massinga is agreeing.

Dr. ALTMAN. Our reading of both the law and practice leaves us a little bit confused on this issue. We have a statute that says one thing; we have a regulation that says another. We have practice that seems to vary all around the country.

Senator MOYNIHAN. We are getting a lot of nods of agreement here.

Dr. ALTMAN. So, we are not at all sure that we can do that under current law or certainly that we can do it for the length of time that is necessary to really make a difference.

Senator MOYNIHAN. Oh, I see. You are dealing here with the basic problem that the statute says 30 days, and the regulations say something else.

Dr. ALTMAN. The statute says 30 days; the regulation appears to say 90 days. Practice seems to be all over the map. That is what we are dealing with.

Senator MOYNIHAN. Right. You need help there from us?

Dr. ALTMAN. Yes, we absolutely need to clarify. We would also like frankly to involve the private sector and nonprofit organizations much more in working with Government in addressing the problems of this group of families on emergency assistance.

So, in every county in New Jersey now, we have set up a comprehensive emergency assistance committee which brings together shelter operators and advocates and human services agencies and local government; and these committees, as they do now for other homeless funds in our State, will oversee the planning and implementation of what we hope will be a brand new emergency assistance program in New Jersey.

We would like to be in a position in New Jersey to literally outlaw—and I mean that literally—the use of welfare hotels for emergency assistance in a couple of years; but it is obviously going to take cooperation from Washington if we are to be able to do that.

Senator MOYNIHAN. All right, sir. I must say this very bluntly: so would we. I think we may find that we can get agreement that everybody has got two years or maybe three; but after that, none. We just can't let the use of welfare hotels go on. We have to make the transition, but it cannot go on.

Dr. ALTMAN. Absolutely.

Senator MOYNIHAN. You know, there is a primal scream at the condition of children.

Dr. ALTMAN. It would be hard to find a policy that makes less sense.

Senator MOYNIHAN. Yes.

Dr. ALTMAN. The first thing we need, obviously, is to see the moratorium on the 30-day limit extended so that the Federal Government continues to provide matching funds. Frankly, if the proposed reduction were implemented, we would see about a 25 percent cut in our entire emergency assistance program. It would in fact gut the emergency assistance program in New Jersey.

And the second thing we need—and it is the point you just made—is the flexibility to use emergency assistance to create alternatives to welfare hotels; and we think there are two ways in which this can happen, and it is with this that I would like to close here today.

The course we would prefer—and I doubt that it is a surprise that we would prefer this approach—would be to see legislation enacted which would grant States the resources and the flexibility they need to do the job. And in return for that, as you just said, we would be willing to live with a specific commitment to phase out

the use of welfare hotels in a specified period of time—whether we agree on two years or three years or even five years.

The legislation could, for example—and this is something that is being discussed these days—establish set-aside funding under the IV-A program which could be used to reduce the number of placements in welfare hotels. We feel sufficiently strongly about this that we certainly in New Jersey would be willing to live with a requirement that we phase out our welfare hotels in return for that sort of flexibility and assistance.

A second approach, as an alternative to a IV-A set-aside, would be a waiver provision, which would mandate that HHS grant the States the ability to use EA more flexibly with the now familiar—all too familiar—caveat—and there is a lot of precedent on this—that the arrangements proposed by the States not cost the Federal Government more than current practice would otherwise cost.

The vagaries with the waiver process, out of experience with this, is such that we would greatly prefer legislation; but in New Jersey, we would live with the waiver approach if we had to because we simply have to get moving on this emergency assistance problem.

So, in summary, as we see it in New Jersey, we need not only to extend the moratorium on the 30-day limit, but we need to get about the business of fundamentally reforming or changing the emergency assistance program as well. And if that is not possible, we certainly would like to see the moratorium extended for a year so that States can play and can count on some Federal funds at least for the foreseeable future.

Senator MOYNIHAN. We must do the latter, and we should do the former; but we are going to have to get another Congress, I think, to take that under consideration. Our distinguished colleague, Senator Evans, has arrived now. I wonder if our panelists would sit back for just a moment. We will resume with Ms. Massinga as soon as Senator Evans has testified.

Senator Evans, we welcome you once again to our hearing on the subject which only a governor seems able to grasp with your understanding of the details of the issues involved. You may proceed as you wish to do, sir.

[The prepared statement of Dr. Altman appears in the appendix.]

STATEMENT OF HON. DANIEL J. EVANS, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator EVANS. Thank you, Mr. Chairman. I am hopeful that there is as much success in the activities on this subject as there was on the subject I last had an opportunity to testify; welfare reform, where you carried such a remarkable program through to success in the Senate.

Senator MOYNIHAN. I was remarking earlier that both presidential candidates have endorsed our bill.

Senator EVANS. Hopefully, they won't even have to worry about it because it will be law.

Mr. Chairman, I would ask that my full statement be placed in the record to begin, I want to summarize the importance and the necessity of our engaging in a continuation of the moratorium on

AFDC collection of these abominable error-rate penalties that have been levied on virtually every State in the nation. I also want to emphasize the importance of moving ahead with QC reform legislation.

We did this before with a two-year moratorium which expired on July 1, 1988. It is incumbent upon us now to extend the moratorium until such time as we can act on the report—a very good report, I might add—which has come as a result of previous legislation from the National Academy of Sciences. The report has been the basis of a bill I introduced recently and would hope still has an opportunity to pass yet this session.

So, I would much prefer a new bill to an extended continuation of a moratorium; but let me very briefly comment on the NAS report and the bill which evolved out of that report. It only underlined Congress' conclusion that the quality control system is in dire need of reform. That was a clear and very definite conclusion of the Academy's panel of experts.

Overall, it was a comprehensive and thoughtful treatment of a very complex subject. The report concluded "that the AFDC and Medicaid quality control systems lack many of the elements of a comprehensive quality improvement system." And I really hope that we focus on quality improvement, not just quality control, because that is in the best interests of the both the Federal Government, the States, and the recipients as well.

Let me turn very briefly to my legislation and the elements of it which I believe are not only consistent with, but follow very closely the recommendations of the National Academy.

First, included in this effort would be the elimination of the existing two-tiered sampling systems. HHS and the States should agree on one sample and how it would be made.

The incredible current situation is where the State, in a rather constrained time period, has to do its sampling; they send it forward to the Federal Government that has all the time in the world and through a much more extensive sampling system to come back and say: Aha, you are wrong. And I think it is important to come in with the same system, the same sampling, and the same understanding so that they are working off the same material.

It will save sparse State resources and hopefully foster a more cooperative atmosphere between the States and the Federal Government.

I concur with the NAS, and our bill does adopt the notion that we move not to a national tolerance level, but recognize that the current performance standards are not scientifically grounded and ignore the inherent State-to-State differences in caseload mix that simply may be beyond the ability of caseload administrators. And that, in itself, influences measured performance.

Instead, in our bill, we allow a State's error rate to vary according to population density, according to caseload volume, and according to composition. For example, my bill establishes a standard deviation percentage so that a State's error rate can be adjusted downward if it has an exceedingly high caseload volume for a given quarter or if the caseload composition consists of complex cases, such as people with earned incomes, which inherently lead to greater potential error rates.

It provides similar adjustment for States with large populations; and the tolerance level, I think, quite clearly ought to recognize that the job of the poor case worker on the firing line is considerably more difficult in a large metropolitan area with the variety of cases and the intensity of cases than it may be in a small rural community.

There is one rather esoteric element of the panel's conclusion with which I disagree and we have modified in the bill. I won't even try to explain it orally, but it is included in my testimony. It has to do with the midpoint of the confidence interval providing the most accurate determination of a State's actual error rate.

I hope that I have explained it well enough in the written testimony and that this slight modification from the NAS report will prove to be a better answer, both for the Federal Government and the States, than the one they suggested. My legislation includes "hold harmless" periods for legislative and administrative changes that affect program eligibility. This provision will allow the case worker on the front line time to absorb the plethora of information he or she has to know to make the proper eligibility determination.

Mr. Chairman, I think we have made significant progress. The findings of the NAS study, coupled with the willingness of the Congress to embark on these fairly significant periods of embargo in terms of collecting on error rate deficiencies have now brought us to a point where we can initiate some substantive reform. I believe we can accomplish this before the end of the 100th Congress. For example, I note that according to CBO's revised estimates, nothing will be collected from the States in AFDC penalties for fiscal year 1989. This estimate gives us a window of opportunity to accomplish reform in a revenue-neutral manner.

In other words, it doesn't cost us anything even under the archaic and arcane rules of the budget Committee because they are now saying we won't collect any of these penalties during fiscal year 1989. So, there is no loss in continuing a moratorium until we get a new bill.

The longer we delay, however, the tougher the task becomes. They are still out there demanding payment and, in fiscal year 1990, they will expect to receive something; and that makes the long term a little more difficult.

The number of States subject to fiscal penalties is very close to 50 now and will inevitably reach 50 in a short period of time. The amount of money pending in those penalties will climb. States will not be able to increase their management efficiency as they get this drain on their dwindling resources; and if they are forced to pay sanctions by our inability to act or by the delay in action, these will be paid out of State program budgets, which means they come right out of the pockets of those we are trying to help.

Mr. Chairman, I commend you for holding hearings on this important issue. I support extension of the moratorium, but only as a last resort. I think a far better thing would be for us to move ahead if we can and concentrate our efforts on passing corrective legislation and do so in the remaining few days of this session.

Senator MOYNIHAN. May I note that we accepted your moratorium as part of the general welfare legislation?

Senator EVANS. We certainly did, and hopefully that will be sufficient.

Senator MOYNIHAN. As a fail safe, we may try to do it here, too. Let me see, sir, whether it looks like this committee can handle the Evans bill in these remaining weeks. If we can't, let me say to you that I will introduce it on the first day of the next Congress because we have in the Academy study a sensible administrative approach.

The problems with AFDC and welfare are that half the measures we take are punitive, and the other half are acts to avoid. There seems to be no middle-ground. We are hearing this from some of the very distinguished witnesses who were testifying when you came in.

In the past, it was: Find out the cheaters. It becomes an effort of retribution as against management.

Senator EVANS. In fact, I might just say that not only is that the case in our overall welfare programs, but very specifically the case in the management of those programs where we have implemented these quality controls with only a punitive side to them.

Senator MOYNIHAN. Yes.

Senator EVANS. And they simply, in my view, with the best intentions of everyone, have just not been practical. Any time it leads to the number of States under penalty as we now have, something is wrong with the system, not with the States.

The idea that State governments don't care because the administrative money may come from the Federal Government, I think, is absolutely wrong. There are people of not only good will but good skill in those departments, and they care very much about how they do their jobs; and every error that is made, every overpayment that is made to a welfare recipient comes just as much out of the State pocket as the Federal Government's pocket.

So, there is a great incentive to try to do a good job; and the one thing that our bill does include, which I did not mention, was that under this new bill we think we have balanced it in a way that will say still to the States who do not do a good job: You are going to be subject to a penalty. But the States who do an especially good job will be eligible for a reward. I think the benefits on the one side for doing an especially good job balancing the penalties on the other side is a whole lot better way to operate than under a system solely of penalties.

Senator MOYNIHAN. I think you are absolutely right, sir. If I could just say that the present arrangements punish states for overpayments but not for underpayments. If I can just quote myself here, I was asked a while ago: Do you think the increase in welfare benefits has led to an increase in welfare dependency?

I said to the person asking me that it certainly could, and I certainly don't know; but I could provide some information on what comes about from a decrease in welfare benefits because we have run that experiment. We have never increased benefits.

Senator EVANS. Right.

Senator MOYNIHAN. Since 1970, the provision for children under AFDC has been cut 35 percent; it is a mind-boggling figure. This is a stigmatized program, and our effort in that welfare legislation—

which you were so wonderful to support—is to try to break that stigma.

We punish adults and, in the process, we punish children. It is not a marginal thing. At any given moment, sir, one child in six is a ward of this committee. They are either living on AFDC, Title IV of the Social Security Act, or they are living on Survivor's Insurance.

In 1970, Survivor's Insurance and AFDC benefits were almost equal. Seventeen years go by, and the benefits in Survivor's Insurance are nearly triple the benefits under AFDC. Right there in our social insurance system, we have a distinction between one class of children and another class of children. It is painful. You don't do things like that in Washington, do you? I bet if you looked up, sir, you would find out you are doing it.

Senator EVANS. I hope we don't, and I don't believe we did when we had that remarkable governor a few years ago in Washington. [Laughter.]

Senator MOYNIHAN. All right. On a very private basis we will find out because, in the nation, we have let the benefit for the orphan become twice that for the abandoned child, as if the child were responsible.

Senator EVANS. Yes. Sometimes that does happen, and it is unfortunate that it does. I might just say in passing—and I understand we have a vote pending—but the irony is, as you say, that we have gradually reduced the benefits and the help for those who are poor and those who cannot take care of themselves and, at the same time, we seem to find no difficulty in increasing payments to farmers, to savings and loan executives, to a whole host of other elements of our society who think they need the help; and they are perfectly willing to receive it. And at the same time, they probably wring their hands over the amount of Federal money that goes out to the poor and the children.

Senator MOYNIHAN. We have a little geographical stretch out here that is called Gucci Gulf; and that is for the line-up that starts at 5:00 in the morning when we have a tax bill before us that affects corporations. You could shoot deer in the hallway out there right now, sir; we are talking about children. This subcommittee hearing will stand in recess for 15 minutes while we vote. Governor, thank you very much.

Senator EVANS. Thank you very much, Mr. Chairman.

[The prepared statement of Senator Evans appears in the appendix.]

[Whereupon, at 2:40 p.m., the hearing was in a brief recess.]

AFTER RECESS

Senator MOYNIHAN. Good afternoon again. We regret that we had to interrupt our hearing, but we do vote in the Senate. So, if Dr. Altman, Ms. Massinga, and Mr. Horel would come forward once again, we will resume. Dr. Altman, we have heard from you. So, I guess next we will hear from Ms. Massinga, and we welcome you; and we will put your statement in the record, of course, and you may proceed exactly as you wish.

STATEMENT OF RUTH W. MASSINGA, SECRETARY, MARYLAND DEPARTMENT OF HUMAN RESOURCES, BALTIMORE, MD

Ms. MASSINGA. Thank you very much, Senator. I, too, bring the greetings of Governor Schafer and the congratulations and best wishes of all of us in the field for your yeoman work on welfare reform; we believe very strongly that we are going to probably have a bill that we all will feel very proud of under your leadership during the 100th Congress.

Senator MOYNIHAN. That is very generous of the governor.

Ms. MASSINGA. I guess I have mixed feelings to have heard the discussion between you and Senator Evans a few minutes ago. It is his leadership that we are going to miss on quality control. It is refreshing and wonderful and saddening to see two Senators understand the issue of administration of a valid quality control system far better than the people who administer that system.

So, we, too, hope that at a minimum we have a moratorium and that, in fact, the bill that Senator Evans has proffered gets great currency next year, if it has to go that far because, in fact, that is the sensible way to go forward. I am really going to focus on the foster care and independent living program because it is of great moment to a State like mine and to many others that are struggling with improvements in the foster care system and in the issue of transition for young people who are leaving foster care and who need a lot of remediation, who need help in finding housing, who need help in focusing on their futures in helpful ways.

My testimony indicates the kinds of improvements along the lines that you have suggested, Senator, that we think are important. And I won't dwell on that, but I would say to you and to the subcommittee that, in the brief time that we have had a Federal investment in independent living in Maryland, we have begun to see improvements of the kind that are indicated in a letter that I want to share with you from a 19-year-old, Beatrice, who wrote to her case worker in March, 1988. She said:

> Dear Mr. Starlings: I just wanted to write to you and let you know that I made the Director's List at PTC—which is the program she is in. I am now typing 74 words per minute, and my teacher is pushing me to do more. She feels that by the time I am finished school, I could be doing 80 or 90 words per minute.
>
> As a child coming up under foster care, I always thought social workers never really cared. It took me until age 19 when I got you as my worker to believe differently. I truly believe that you are one of the best workers foster care could ever have and probably will have.
>
> When it was necessary for you to see me, you always made it as convenient for me as possible. I remember you coming down to Strayer—the business school that she is attending—twice to see me. The $2500.00 was a big help to me. It took a good worry off my mind. Since having my loan paid off, I can concentrate on keeping my B+ average.
>
> I will be in touch with you when I finish school to let you know how I am doing. You seem to be a worker that believes in people and, because you believed in me, you made me believe in myself.
>
> Again, I just want to thank you for all your time, your patience and, most of all, your concern. Sincerely, Beatrice.

Senator MOYNIHAN. A lovely letter, Ms. Massinga—intelligent and beautifully written.

Ms. MASSINGA. It is, and I will be happy to provide it to the subcommittee.

Senator MOYNIHAN. Thank you. Please give us that as part of your testimony.

Ms. MASSINGA. I will. I think it is an indication of the kind of difference that this program has made in the lives of young people who, for varieties of reasons—largely among the adolescents that we see in Maryland—have not had a chance to complete their education and who aren't going to make by age 18 and who are going to need additional resources for them to not fall into the trap of welfare and other dependency. For that reason, we believe that a continuation of this program is vital, not just in our State but throughout the nation. We think that certainly the program ought to be reauthorized for an additional year.

Those States, because of administrative difficulties within HHS have some carry-forward, ought to be able to carry that forward for an additional year. We ought to allow States to use these funds for all children in foster care, not just for IV-A children.

I would say parenthetically that in Maryland only about 27 percent of the children in care who are eligible are IV-A eligible; and, in fact, we have concentrations of young people in the urban areas who are IV-A eligible rather than throughout the State. We have had a small program with State money only, and that has augmented our ability to help other children make the transition; but we think it is important that States be able to use these dollars for all children in foster care and they not be limited to IV-A eligibles.

We think that there needs to be a transition period for independent program living eligibility six months after the teens leave foster care in the event that they need—as they frequently do—some further ability to check in with their worker, check in with their programs if things do not work out, for us to shore them up both with regard to programs as well as with dollars. And we think that the dates for State report filing ought to be changed to January of 1989. In fact, the point is that we have just got going. We have really just started to gear up. I think there are already remarkable opportunities that have been afforded young people. If the program was reauthorized now and with some ability for us to stabilize them, I think will lose all of us an important opportunity and most especially those young people who are at risk of falling into homelessness or falling into welfare dependency and so on. So, for all of those reasons, we are especially supportive of your efforts to maintain the alternative living program and to expand it in the ways that we have suggested.

Senator MOYNIHAN. All right. There is nothing like saying one thing very firmly and getting on. [Laughter.]

All right, Mr. Horel, you are next; and then we will all talk for a bit here. I do want to say that that is a lovely letter; that young lady can write. Not everyone, no matter the age, can write; she could teach composition at some of the Ivy League colleges I have heard of. [Laughter.]

Mr. Horel?

[The prepared statement of Ms. Massinga appears in the appendix.]

STATEMENT OF ROBERT A. HOREL, DEPUTY DIRECTOR, WELFARE PROGRAM DIVISION, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, SACRAMENTO, CA

Mr. HOREL. Mr. Chairman, we really appreciate being able to speak to the three issues that you raised at the beginning of the hearing. These are major issues for California, and we very much appreciate the opportunity to speak to them. First, we very strongly support the moratorium on the DHHS rules that would prohibit States from providing EA or AFDC special needs, which is more important to us, to homeless families.

Senator MOYNIHAN. Will you make that distinction for an illiterate here? Special needs as against EA?

Mr. HOREL. All right. Under Title IV-A, there is the EA program, which is what most of the discussion has been about. The proposed regulations also put the same limitations on special needs. Special needs is a portion of the AFDC program where people who have needs that are not common to the rest of the group.

Senator MOYNIHAN. I didn't realize that.

Mr. HOREL. Yes, that is true. As of February 1, California established a homeless benefit program under the special needs provision. We just started it February 1. We provide temporary and permanent shelter benefits to families and allow them then to get their children into a stable environment. We think it would be a very major step backward for California to put ourselves in the position where we are ending that program and putting those children back on the street. We don't see that as a——

Senator MOYNIHAN. Do you have welfare hotels, too?

Mr. HOREL. No, sir.

Senator MOYNIHAN. You haven't got them, but you have the special needs?

Mr. HOREL. We have a special needs program that provides for temporary shelter. We provide $30.00 a day for families to get their own accommodations, and we also provide permanent shelter, which is last month's rent and whatever utility hookups they need. The second major issue is that we are in support of the moratorium on collection of AFDC sanctions, pending the reform of the quality control sanction system. I think during that time period we need AFDC to be free of the divisive effects of dealing with those sanctions. We need to all continue working on the system, and we are very much for that moratorium. Finally, regarding the independent living that my colleague from Maryland so aptly spoke to, we also see this as a very beneficial program. We would like to see it extended and improved. Thank you.

Senator MOYNIHAN. Aren't you succinct? We might have a little experiment going on in independent living, mightn't we? I don't know what your experiences are in California where everything is different, but—[Laughter.]

I mean, I know what our experience has been in New York and we've just heard about Maryland and New Jersey; California's experience can't be that different. To have an 18-year-old girl just suddenly age out of foster care—and all you say is, "good luck." Go out and get yourself an apartment in Manhattan, and get yourself

a job, and find a circle of young people you would like to get to know, or go to college. That is madness.

I mean, it can't be done, The next thing you see is they are——

Ms. MASSINGA. They are on welfare.

Senator MOYNIHAN. They are on welfare, as you said.

[The prepared statement of Mr. Horel appears in the appendix.]

Senator MOYNIHAN. I want to ask something in that regard. This is not on our agenda, and it may not be something that you are familiar with; but it is something that is beginning to happen in New York.

The drug problem is beginning to appear in our welfare families, in the female side of the family. It was always there, I suppose, on the male side; and that was one reason why the family was in trouble. And we are beginning to find children simply abandoned in ways that they never were. I was wondering—well, I can see Ms. Massinga is acknowledging. Dr. Altman? Mr. Horel? Are you beginning to find this experience? It is associated with "crack" in New York.

Mr. HOREL. We are very much beginning to find it. As a matter of fact, just the other day we encountered a three-year-old boy who was abandoned on the streets of Trenton. We think it was for that reason because we know a little bit about his background; and we have been seeing case after case that looks a lot like that. We are seeing increasingly, in dealing with welfare families in emergency assistance and in the Reach Program, the impact of the drug problem, so much so that we have said in Reach that if you have a drug problem, we don't want to talk to you about job search or job training or any of that. We want you in a drug program. So, a drug and social services program for those families fulfills their Reach obligation. I think otherwise we are never going to get anywhere in helping them.

Senator MOYNIHAN. You are not going to reach them.

Mr. HOREL. No.

Senator MOYNIHAN. Ms. Massinga?

Ms. MASSINGA. I would echo that. I think anecdotally we certainly don't have any data yet, but I see in some of the most difficult child abuse cases—some of those instances in which children may have been sexually abused or assaulted and, in some instances, murdered—we see the connection between drug abuse either of the recipient and/or of the boyfriend. So, the issue of drugs and association to maltreatment of children is, I think, increasing; and we are seeing it more and more, unfortunately, as a matter of course with young women who are receiving public welfare with our tack of independence, which is our welfare reform effort, as we start to try to put them on course. We see it a lot in child welfare in general, which is part of why the governor has made available many more dollars for community-based treatment associated with child welfare. And AFDC is a major portion of that in poor families because we cannot, as my colleague from New Jersey says, resolve any of the other issues until we start to tackle the drug abuse problem.

Senator MOYNIHAN. Right. In California?

Mr. HOREL. There are three areas that occur to me right here that we are really seeing. One is the area in which parents using

drugs desert or abuse their children, and I think that is a growing problem clearly. A second very worrisome problem is the behavior of the children themselves. Our children who are in foster care have more difficult mental problems; they are having mental health problems. They are having serious behavioral problems, and they are having serious health problems because of their involvement with the drugs. And the third, almost most worrisome, is the expanding number of babies born addicted to drugs. And that is becoming a major problem.

Senator MOYNIHAN. Sir, I would like to cite for the record at this point a study by two physicians at the University of California Medical School at San Diego—of children born to drug-addicted mothers. Listen to this; you may not know this: 39 percent had major abnormalities. That is never associated with heroin use, nor yet with cocaine in its inhaled form. It is crack, which, if you are a public health official, you think of as a mutant of an old virus that suddenly has hit. The product appeared in the Bahamas in 1983; that is how recent it is, you see. It got to New York City about 24 months ago. It has epidemic qualities to it, and people are not prepared for it and don't know how to deal with it. It is vastly more dangerous.

Ms. MASSINGA. Yes.

Mr. HOREL. Yes.

Senator MOYNIHAN. I guess my point of inquiry is simply that, if we have more of this—and we are going to have more before we have less—we are going to have more foster care. I am afraid that is so.

The hearing is at an end. We would like to thank our two panels for expert testimony. I would like to thank Governor Kean and Governor Schafer for their good wishes to the committee, and we will need them. I am going to ask that the record be left open for questions which any members may wish to address to you. When you appear before this committee, you are under a 30-day jeopardy of receiving queries that have to be replied to in writing; but I know you will do it in good spirit. We will try to do exactly what you have asked of us, and we appreciate very much your testimony, and particularly you, sir, coming all the way from California.

Mr. HOREL. Thank you.

Senator MOYNIHAN. The hearing will now close, thanking our staff who have been very patient with us all.

[Whereupon, at 3:17 p.m., the hearing was adjourned.]

SOCIAL SECURITY AND PUBLIC ASSISTANCE PROPOSALS FOR INCLUSION IN A BILL TO MAKE TECHNICAL CORRECTIONS TO THE TAX REFORM ACT OF 1986

Statement by

Senator Daniel Patrick Moynihan

Chairman

Senate Committee on Finance

Subcommittee on Social Security and Family Policy

Hearing on Social Security and Public Assistance Proposals

215 Dirksen Senate Office Building

Thursday, July 14, 1988

(27)

July 14, 1988

The Subcommittee on Social Security and Family Policy will hear testimony this afternoon on a number of Social Security and Income Maintenance proposals that are under consideration as part of S. 2238, a bill to make technical corrections to the Tax Reform Act of 1986. The Senate Finance Committee expects to take this bill up in the near future.

The Subcommittee is also scheduled to hold a second hearing on Friday morning, July 29, 1988, on my proposal to require the Secretary of Health and Human Services to provide periodic statements to individuals who expect to receive Social Security retirement benefits. These statements would provide information on the individual's earnings record and estimate his or her benefits at retirement. We will hear some general testimony on this idea today and more detailed discussions at our next hearing.

Among the other provisions we will hear about today are several related to the Aid to Families with Dependent Children (AFDC) program.

AFDC-Quality Control

The first of these would extend for one year the moratorium on collecting AFDC-Quality Control (QC) fiscal sanctions. I might note that the Senate has just passed such a provision as an amendment to our welfare bill. That amendment was offered by my distinguished colleague from Washington, Senator Evans, who we are fortunate to have with us today. (The House-Senate conference on the welfare bill commenced yesterday.)

In April 1986, as part of the Consolidated Omnibus Budget Reconciliation Act (COBRA), Congress imposed a two-year moratorium on the collection of AFDC fiscal sanctions. That moratorium expired on July 1, 1988. Under current law [Section 403(i) of Title IV-A of the Social Security Act], states are subject to federal fiscal sanctions when their "erroneous payment rates" (payments to ineligible families and overpayments to eligible families) exceed 3 percent of their total AFDC benefit payments.

On April 29, 1988, the Department of Health and Human Services reported that in FY 86, the average state AFDC error rate was 7.15 percent and that only five states had error rates at or below 3 percent. These states were Kentucky, Nevada, North Carolina, North and South Dakota. We join HHS officials in commending these states for their magnificent, error-free administration of the AFDC program. But we cannot help but wonder if the statutory 3 percent threshold is realistic, given that 45 states are subject to fiscal sanctions!

It should come as no surprise that state and federal officials have long disagreed over the imposition of these sanctions. In fact, state litigation and the congressionally imposed moratorium have prevented the federal government from collecting a single dollar in AFDC sanctions from the states. As a result, the accumulated sanctions for fiscal years 1981-1986 total nearly $1.2 billion! My own state of New York's share of that sum comes to $227 million; California's share is $248 million.

Fortunately, help is on the way. As part of our 1986 legislation, we instructed the National Academy of Sciences to

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conduct a thorough study of the AFDC-QC system. That report has recently been submitted to the Congress. Senator Evans, who has mastered the intricacies of this subject, introduced on June 16, 1988, comprehensive legislation (S. 2522) to overhaul the QC system. I understand that his bill incorporates many of the recommendations included in the National Academy of Sciences' report.

Emergency Assistance/Special Needs Regulations

We have a second moratorium to consider. On December 14, 1987, the Family Support Administration proposed federal regulations that would sharply curtail the states' use of AFDC-Emergency Assistance (EA) and "special needs" funds for providing emergency shelter to homeless AFDC families.

While I abhor the use of so-called "welfare" hotels for families with children, neither can I countenance an abrupt withdrawl of federal funds for sheltering homeless AFDC families. Federal budget authority for low-income housing has already been slashed by over 70% in the last seven years! This is no time to further reduce federal support for emergency housing.

Clearly, we need to review our AFDC-Emergency Assistance policies and develop a time certain when all states and localities will have to cease using "welfare" hotels to shelter families with children. In the meantime, I expect to offer an amendment to delay (until July 1, 1989) the implementation of the proposed HHS regulations.

Independent Living

I first introduced the Foster Care Independent Living program as part of S. 1329, the Foster Care, Adoption Assistance, and Child Welfare Amendments of 1985. The Independent Living program -- designed to help older children in foster care make the transition to independence -- went on to become law, as an amendment to the Consolidated Omnibus Reconciliation Act of 1985 (COBRA, P.L. 99-272).

The program was originally authorized to operate in fiscal years 1987 and 1988. Because of Administration delays, states did not actually begin receiving program funds until July of 1987. On July 1, 1988, the Congress was to receive a report from the Secretary of HHS on the status of the program. We have not yet received that report, but I understand we will have it shortly.

I am inclined to reauthorize the Independent Living program, with some minor changes, for another year. Toward that end, I introduced S. 2461 on May 27, 1988. The House is considering identical lelgislation.

Social Security Provisions

Finally, we have a number of minor and technical Social Security provisions proposed by the House Subcommittee on Social Security, as well as a few submitted by the Administration. We will hear from the Social Security Administration today regarding these provisions.

MATERIALS RELATED TO
SOCIAL SECURITY AND PUBLIC ASSISTANCE PROPOSALS
TO BE CONSIDERED AT A HEARING OF THE
SUBCOMMITTEE ON SOCIAL SECURITY AND FAMILY POLICY

(prepared by the staff of the Committee on Finance)

I. Proposals Related to the Old-age, Survivors, and Disability Insurance Program (OASDI)

ADMINISTRATION PROPOSALS TRANSMITTED JUNE 6, 1988

Elimination of the Dependency Test Applicable to Certain Adopted Children

Present Law

Under current law, a child adopted by a worker before the worker becomes disabled or entitled to retirement benefits is treated the same as a natural child for purposes of qualifying for social security child's benefits. In contrast, a child adopted after a worker has become disabled or entitled to a retirement benefit may qualify for benefits only if the child was living with the worker in the United States and receiving at least one-half of his or her support from the worker during the year before the onset of the worker's disability or the worker's entitlement to retirement benefits.

Proposal

The special dependency test applicable to children adopted after a worker's onset of disability or entitlement to retirement benefits would be eliminated.

Effective Date

The provision would be effective for benefits payable the month after enactment, but only on the basis of applications filed on or after the date of enactment.

Cost

The Administration estimates that this proposal will have a cost of $10 million in each of fiscal years 1989 and 1990 and $20 million in each of fiscal years 1991, 1992, and 1993.

Trust Fund Receipts

Present Law

Under current law, miscellaneous income generated by the administration of the social security program is deposited into the miscellaneous receipts account of the general fund of the Treasury, even though such income is the byproduct of operations whose cost is borne by the social security trust funds.

Proposal

The trust funds would be credited with the income generated by the administration of the social security program. Such income would include, but not be limited to, penalties and fees, proceeds from the sale, use or other conversion of trust fund assets (e.g., wastepaper sales), and receipts generated by the bulk conversion of dollars into foreign currency for direct deposit of benefit payments in foreign countries.

Effective Date

The provision would apply to income received on or after the date of enactment.

Cost

No cost estimate is available.

Clarification Regarding the Crediting of Self-Employment Income to Earnings Records After Expiration of the Time Limitation

Present Law

Social security earnings records generally may be corrected only within 3 years, 3 months, and 15 days after the end of a taxable year. However, an earnings record may be corrected after expiration of the time limitation to conform to tax returns or other written statements filed with the Commissioner of Internal Revenue. If the tax return involves self-employment income (SEI), the Social Security Administration's policy is that the return must have been filed within the prescribed time limit.

Proposal

The provision would make clear that the SEI exception to the time limitation for correcting earnings records applies only to timely filed individual self-employment tax returns. This would avoid the situation that occurred under one court decision that allowed revisions to the earnings record of an individual to reflect SEI based on information returns filed by a business showing only gross amounts paid to the individual. The Administration believes that using such information provides insufficient evidence to establish the existence of a trade or business operated by the individual or the individual's deductible expenses, and is inconsistent with the basic policy that self-employed people are responsible for reporting their own SEI.

Effective Date

The provision would be effective upon enactment.

Cost

The Administration estimates no cost impact for this proposal.

Extension of Authority to Prescribe Magnetic Media Reporting Requirements Applicable to Payroll Agents

Present Law

Under authority provided by the Internal Revenue Code, the Secretary of the Treasury has issued regulations that require employers having 250 or more employees to file returns on magnetic media. The Secretary's regulatory authority does not extend directly to payroll agents who prepare payroll data or file returns for employers. As a result, payroll agents who prepare a high volume of returns for employers of less than 250 people do not need to file them on magnetic media.

Proposal

Extend the Secretary's authority to set magnetic media reporting standards for payroll agents of employers.

Effective Date

The provision would be effective with respect to returns required to be filed for taxable years that begin after December 31, 1988.

Cost

The Administration estimates no cost impact for this proposal.

PROPOSALS APPROVED BY THE HOUSE WAYS AND MEANS COMMITTEE FOR INCLUSION IN THE TAX TECHNICAL CORRECTIONS BILL

Interim Disability Benefits in Cases of Delayed Final Decisions

Present Law

If, upon appeal, an individual receives an unfavorable determination regarding disability benefits from an Administrative Law Judge (ALJ), he or she may appeal the ALJ's decision to the Social Security Administration's Appeals Council. If, on the other hand, the individual receives a favorable determination from the ALJ, the Appeals Council may review the determination on its "own motion." Interim disability benefits are not paid while a case is under review by the Appeals Council.

Proposal

In any disability case under Title II or Title XVI of the Social Security Act in which an ALJ has made a decision favorable to the individual and the Appeals Council has not rendered a final decision within 110 days, interim benefits would be provided to the individual. (Delays in excess of 20 days caused by or on behalf of the claimant would not count in determining the 110 day period.) These benefits would begin with the month before the month in which the 110-day period expired, and would not be considered overpayments if eligibility were subsequently denied, unless the benefits were fraudulently obtained.

Effective Date

The provision would be effective with respect to favorable ALJ decisions made 180 days or more after enactment.

Cost

CBO estimates a cost of under $0.5 million in fiscal year 1989 and $1 million in each of fiscal years 1990-93.

Continuation of Disability Benefits During Appeal

Present Law

A disability insurance beneficiary who is determined to be no longer disabled may appeal the determination sequentially through three appellate levels within the Social Security Administration (SSA): a reconsideration, usually conducted by the State Disability Determination Service that rendered the initial unfavorable determination; a hearing before an SSA administrative law judge (ALJ); and a review by a member of SSA's Appeals Council.

The beneficiary has the option of having his or her benefits continued through the hearing stage of appeal. If the earlier unfavorable determinations are upheld by the ALJ, the benefits are subject to recovery by the agency. (If an appeal is determined to be in good faith, benefit repayment may be considered for waiver.) Medicare eligibility is also continued, but Medicare benefits are not subject to recovery.

The Omnibus Budget Reconciliation Act of 1987 extended this provision for one year. The Act authorized the payment of interim benefits to persons in the process of appealing termination decisions made before January 1, 1989. Such payments may continue through June 30, 1989 (i.e., through the July 1989 check).

Proposal

The period in which benefits may be paid and Medicare eligibility continued while an appeal is in progress would be extended for one additional year. Upon application by the beneficiary, benefits would be paid while an appeal is in progress with respect to unfavorable determinations made on or before December 31, 1989 and would be continued through June 1990 (i.e., through the July 1990 check).

The provision would apply pending a report from the Secretary of Health and Human Services to the Committee on Ways and Means and the Committee on Finance. The report is to assess the impact of the continuation of benefits on the Social Security and Medicare Trust Funds and the rate of appeals of disability determinations to administrative law judges.

Effective Date

The provision would be effective with respect to unfavorable decisions made on or before December 31, 1989.

Cost

CBO estimates the provision to cost $ 8 million in fiscal year 1989, $20 million in fiscal 1990, less than $ 0.5 million in fiscal 1991, and $3 million in each of fiscal years 1992 and 1993.

Consolidation of Reports on Continuing Disability Reviews

Present Law

The Secretary of Health and Human Services is required to make two types of reports on continuing disability reviews to the Senate Committee on Finance and the House Committee on Ways and Means. The first is a semi-annual report on the results of continuing disability reviews. The second is an annual report on the appropriate number of disability cases to be reviewed in each State.

Proposal

These two types of reports on continuing disability reviews would be consolidated into one annual report to be made to the Senate Committee on Finance and the House Committee on Ways and Means. The report would remain separate from the Social Security Administration's Annual Report to the Congress.

Effective Date

This provision would be effective with respect to reports required to be submitted after the date of enactment.

Cost

No cost is estimated for this provision.

Exemption from Reduction in "Windfall" Benefit

Present Law

Under the windfall benefit provision of the Social Security Amendments of 1983, social security benefits are generally reduced for workers who also have pensions from work that was not covered under social security (for example, work under the Federal Civil Service Retirement System and work for many State and local governments). Under the regular, weighted benefit formula, benefits are determined by applying a set of declining percentages to average indexed monthly earnings. For workers who reach age 62 in 1988, a worker's basic benefit is equal to 90 percent of the first $319 of average indexed monthly earnings, 32 percent of earnings from $319 to $1,922, and 15 percent of earnings above $1,922. The formula applicable to those with pensions from non-covered employment substitutes a rate of 40 percent for the 90-percent rate in the first bracket. (The second and third factors of the formula remain the same.) The resulting reduction in the worker's social security benefit is limited to one-half the amount of the non-covered pension. The new law is being phased in over a 5-year period, beginning with those persons first eligible for social security benefits in 1986.

Workers who have 30 years or more of substantial social security coverage are fully exempt from this treatment. For workers who have 26-29 years of coverage, the percentage in the first bracket in the formula increases by 10 percentage points for each year over 25, as illustrated below:

Years of social security coverage	First factor in formula
25 or fewer	40 %
26	50 %
27	60 %
28	70 %
29	80 %
30 or more	90 %

Proposal

The years of social security coverage required in order for an individual to be exempt from the windfall benefit formula would be lowered from 30 to 25 years. The years of coverage at which the formula gradually takes effect would be scaled back, as illustrated below:

Years of social security coverage	First factor in formula
20 or fewer	40 %
21	50 %
22	60 %
23	70 %
24	80 %
25 or more	90 %

Effective Date

The provision would be effective for benefits payable for months after December, 1988.

Cost

CBO estimates this provision to cost $ 1 million in fiscal year 1989, $ 2 million in fiscal year 1990, $ 4 million in fiscal year 1991, $ 8 million in fiscal year 1992, and $ 14 million in fiscal year 1993.

Calculation of Windfall Benefit Guarantee Amount in Month of Concurrent Entitlement Rather Than Concurrent Eligibility

Present Law

Under the windfall benefit provision, a special formula is used to compute the social security benefits of workers who are also eligible for pensions based on non-covered employment. The "windfall guarantee" assures that the resulting reduction in the social security benefit will not exceed one-half of the amount of the non-covered pension. The amount of the non-covered pension used in this calculation is the amount payable in the first month the individual is eligible for both the pension and social security (i.e., the first month he or she could receive both of these benefits if he or she applied for them--the month of "concurrent eligibility"). This amount is used regardless of whether the individual actually receives (i.e., is entitled to) these benefits at that time.

To compute an individual's benefits, the Social Security Administration must ask the individual's pension administrator to determine the pension amount that would have been payable at the date of first concurrent eligibility for the pension and social security (usually age 62) regardless of the pension amount which the person will actually receive upon entitlement. Processing delays and errors can occur when pension administrators make this hypothetical computation of the pension amount.

Proposal

The amount of the pension considered when determining the windfall guarantee would be the amount payable in the first month of concurrent entitlement to both social security and the pension from non-covered employment.

Effective Date

The provision would be effective for benefits based on applications filed on or after January 1, 1989.

Cost

CBO estimates this provision to have savings of under $ 0.5 million in each of fiscal years 1989-1992 and of $ 1 million in fiscal year 1993.

Government Pension Offset

Present Law

Social security benefits payable to spouses of retired, disabled, or deceased workers are reduced to take account of any public pension the spouse receives as a result of work in a government job not covered by social security. The amount of the reduction is equal to two-thirds of the government pension. Generally, Federal workers hired before 1984 are part of the Civil Service Retirement System (CSRS) and are not covered by social security. Most Federal workers hired after 1983 are covered by the Federal Employees' Retirement System Act of 1986 (FERS), which includes coverage by social security. The FERS law provided that workers covered by the CSRS could, during July to December, 1987, make a one-time election to join FERS. As the law generally provides that the offset does not apply to workers whose government job is covered by social security on the last day of the person's employment, a CSRS employee who switched to FERS during this period immediately became exempt from the government pension offset. However, the Omnibus Budget Reconciliation Act of 1987 provided that employees who elect to join FERS during any election period which may occur after 1987 would be exempt only if they have 5 or more years of Federal service covered by social security after June 30, 1987.

Proposal

The provision would grant an exemption from the government pension offset to anyone who elected FERS before 1988 even if that person retired from the government service before the FERS coverage became effective and thus does not meet the current law requirement of having been subject to social security on the last day of employment.

In addition, the provision would make it clear that the 1987 provision applies not only to Federal employees who join FERS by electing to become subject to chapter 84 of title 5, United States Code, but also to foreign service employees who join FERS by electing to become subject to chapter 22 of title 1, United States Code.

Effective Date

The provisions would be effective as if they had been included in the 1987 law at the time of its enactment.

Cost

No cost estimate is available.

Application of Earnings Test in Year of Individual's Death

Present Law

A social security beneficiary under age 70 with earnings in excess of certain thresholds is subject to a $1 reduction in benefits for every $2 earned over the exempt amount. The annual exempt amount under the earnings test is lower for beneficiaries under age 65 than for those 65-69. In 1988, the exempt amount for those under age 65 is $6,120, and the age 65-69 exempt amount is $8,400. The higher exempt amount is applicable in the year a beneficiary reaches age 65.

If a beneficiary dies, the annual exempt amount applicable at the time of death is prorated based on the number of months that he or she lived during the year. In addition, the lower exempt amount applies for a beneficiary who dies before his or her birth date in the year that he or she would have turned 65. Thus, overpayments can occur in the year of death because the thresholds on earnings are lower than had been anticipated.

Proposal

The annual exempt amount would not be prorated in the year of death. In addition, the higher annual exempt amount for beneficiaries age 65-69 would apply to people who die before their birth date in the year that they otherwise would have attained age 65.

Effective Date

The provision would be effective with respect to deaths after the date of enactment.

Cost

CBO estimates this provision to have a cost of $ 2 million in each of fiscal years 1989-1992 and of $3 million in fiscal year 1993.

Denial of Benefits to Individuals Deported or Ordered Deported on the Basis of Association with the Nazi Government of Germany During World War II

Present Law

People who are deported for violating specified provisions of the Immigration and Nationality Act lose their social security benefits. The list of provisions for which people are denied benefits does not, however, include paragraph 19 of that Act. Paragraph 19, which was added to the Immigration and Nationality Act in 1978, pertains to people deported for certain activities in association with the Nazi government of Germany during World War II.

Proposal

Benefits to individuals deported as Nazi war criminals under paragraph 19 of the Immigration and Nationality Act would be terminated.

Effective Date

The provision would apply only in the case of deportations occurring, and final orders of deportation issued, on or after the date of enactment, and only with respect to benefits beginning on or after such date.

Cost

No cost is estimated for this provision.

Modification in the Term of Office of Public Members of the Boards of Trustees

Present Law

The Boards of Trustees of the Social Security Trust Funds are composed of the Secretaries of the Treasury, Labor, Health and Human Services, and two members of the public. The members of the public are nominated by the President and confirmed by the Senate. The law specifies that their term of service is for four years, but is otherwise silent on the length of term for a public member appointed to fill a vacancy left by another public member who leaves before the end of his or her term. The law is likewise silent on whether a public member is permitted to serve after the expiration of his or her term until a successor has taken office.

Proposal

A public member appointed to fill a vacancy occurring before the end of a term would be appointed only for the remainder of such term. A public member, whether appointed for a full term or appointed to fill an unexpired term, would be permitted to serve after the expiration of that term until a successor has taken office.

Effective Date

The provision would be effective upon enactment.

Cost

No cost is estimated for this provision.

Extend Social Security Exemption for Members of Certain Religious Faiths

Present Law

Self-employed workers may claim an exemption from social security coverage if they are a member of a religious sect or division that is conscientiously opposed to the acceptance of public or private insurance benefits and which provide for the care of their dependent members (e.g., the Amish). Employees who belong to such religious sects, however, are required to participate in social security.

Proposal

The provision would extend the current law treatment of the self-employed to their employees in cases where both the employee and the employer are members of a qualifying religious sect or division. The optional exemption would apply to both the employer and employee portion of the tax and only to religious sects or divisions that have existed at all times since December 31, 1950.

Effective Date

The provision would apply to taxable years beginning on or after January 1, 1989.

Cost

CBO estimates that this provision will reduce revenues by $ 11 million in fiscal year 1989, $ 14 million in each of fiscal years 1990 and 1991, and $ 15 million in each of fiscal year 1992 and 1993.

Use of Social Security Numbers to Locate Blood Donors with AIDS

Present Law

Government agencies may require individuals to furnish social security numbers (SSNs) only for certain specified purposes. States are authorized to require SSNs to administer tax, public assistance, drivers' license or motor vehicle registration laws.

Proposal

States or authorized blood donor facilities (those licensed or registered with the Food and Drug Administration, such as the Red Cross) would be permitted to require donors to furnish social security numbers. The SSN would be available to locate the address of a blood donor found to be carrying the virus for acquired immune deficiency syndrome (AIDS), for the sole purpose of informing the blood donor of the possible need for medical care and treatment.

The provision protects the privacy of blood donors by permitting access to the address information only to State agencies and blood donor facilities meeting requirements for confidentiality and security.

Effective Date

The provision would be effective upon enactment.

Cost

No cost estimate is available.

Payment of Lump Sum Death Benefits to Surviving Spouse

Present Law

A lump sum death payment of $255 is payable on the death of an insured worker to a surviving spouse who is living with the worker at the time of the worker's death. If there is no such spouse, then the benefit is payable to a spouse who is eligible for benefits as a widow(er), mother, or father at the time of the worker's death. If there is no eligible spouse, the lump sum death payment is payable to a child of the deceased worker who was eligible to receive benefits on the deceased's earnings record for the month in which the worker died. If the widow(er) dies before making application for the lump sum payment or before negotiating the benefit check, no lump sum death benefit is payable.

Proposal

The provision would permit the legal representative of the estate of a deceased widow(er) to claim the lump sum payment in cases in which the otherwise eligible widow(er) dies before having received or negotiated such payment. Where the legal representative of the estate is a State or political subdivision of a State, the lump sum benefit would not be payable.

Effective Date

The provision would be effective with respect to deaths of widow(er)s occurring on or after January 1, 1989.

Cost

CBO estimates that this provision will cost $1 million in each of fiscal years 1989 - 1993.

Requirement of Social Security Number as a Condition for Receipt of Social Security Benefits

Present Law

Applicants for social security benefits are not required to have social security numbers in order to receive benefits. The absence of a social security number for auxiliary and survivor beneficiaries hampers monitoring which might detect duplicate benefit payments, miscredited earnings, or entitlement to other benefits.

SSA currently requests that applicants voluntarily provide their social security numbers. Under Federal law, recipients of Aid to Families with Dependent Children, Supplemental Security Income, and Veterans' Assistance benefits are currently required to provide their social security numbers in order to receive benefits under those programs.

Proposal

Individuals would be required to have a social security number in order to receive social security benefits. Those lacking a social security number would be required to apply for one. Beneficiaries currently on the rolls would not be subject to this requirement. However, they would be encouraged to provide a correct social security number or to apply for a number if one had not previously been assigned.

Effective Date

The provision would be effective with respect to benefit entitlements commencing after the sixth month following the month of enactment.

Cost

No cost estimate is available.

Substitution of Certificate of Election for Application to Establish Entitlement for Certain Reduced Widow(er)'s Benefits

Present Law

An individual who (1) is receiving a combination of a reduced spouse's benefit and either retirement or disability benefits on his or her own record and (2) is between the ages of 62 and 65 when his or her spouse dies, must file an application to receive reduced widow(er)'s benefits.

Those who are over age 65 when the worker dies and who are receiving spouses' benefits or those age 62-65 when the worker dies who are not entitled to their own retirement or disability benefits may receive reduced widow(er)s' benefits by filing a certificate of election rather than an application. An application for a reduced widow(er)'s benefit is generally not effective for months before the month of filing. Thus, a break in entitlement could occur if the application were not filed in a timely fashion.

Proposal

An individual who is receiving both a reduced spouse's benefit and a retirement or disability benefit and who is between the ages of 62 and 65 when his or her spouse dies, could receive a reduced widow(er)'s benefit by filing a certificate of election. A certificate of election would be effective for up to 12 months before it is filed.

Effective Date

The provision would be effective with respect to benefits payable based on the record of individuals who die after the month of enactment.

Cost

CBO estimates that this provision will cost less than $ 0.5 million in each of fiscal years 1989 - 1992 and $ 1 million in fiscal year 1993.

Group-term Life Insurance

Present Law

The Omnibus Budget Reconciliation Act of 1987 required the cost of employer-provided group term life insurance to be included in wages for FICA tax purposes if it is includible for gross income tax purposes. Under current law, it is includible for gross income tax purposes to the extent that coverage exceeds $50,000.

Proposal

Exclude from the FICA tax group-term life insurance provided to individuals who separated from service before January 1, 1989. This provision recognizes that employers may have difficulty collecting FICA tax from employees who have already separated from service and retired.

Effective Date

The provision would be effective with respect to separations from service on or after January 1, 1989 as though it had been included in the 1987 act.

Cost

CBO estimates a revenue loss of $ 4 million in fiscal year 1989 and 2 million in each of fiscal years 1990 through 1993.

Corporate Directors

Present Law

The Omnibus Budget Reconciliation Act of 1987 provides that corporate directors' earnings shall be treated as received when earned, regardless of when actually paid, for purposes of both the social security tax and the social security earnings test.

Proposal

The portion of the 1987 provision that treats directors' earnings as received when earned, and thus taxable for social security purposes, would be repealed. Directors' earnings would be treated as received when earned only for purposes of the social security earnings test.

Effective Date

The provision would be effective as if it had been included in the 1987 law at the time of its enactment.

Cost

CBO estimates this provision to have no cost or revenue effect.

Clarification Regarding Social Security Coverage for Certain Senior Civil Servants

Present Law

(1) The Social Security Amendments of 1983 provided mandatory social security coverage for presidential appointees as well as the President, Members of Congress, Federal judges, and certain executive level civil servants. However, Section 205(p) of the Social Security Act provides that the Secretary of Health and Human Services shall accept the determination of the head of a federal agency as to whether a federal employee has performed service, as to the periods of such services, and as to the amount of remuneration which constitute wages. The Office of Personnel Management (OPM) has interpreted this section to mean that a federal agency may determine whether or not an employee's service constitutes social security-covered employment. Because the civil service statute permits career Senior Executive Service (SES) employees to retain their pay, rank and retirement plan when they move to a presidential appointment, OPM has interpreted section 205(p) to mean that such individuals may avoid social security coverage despite the coverage provisions of the 1983 Social Security Amendments (while retaining coverage under the old Civil Service Retirement System).

No other individuals receive such treatment. For example, individuals in the private sector or career civil servants in a non-SES job are mandatorily covered by social security when they take a presidential appointment.

(2) When an individual accepts a mandatorily covered federal job and subsequently returns to his or her previous job or another non-covered federal job, he or she loses social security coverage.

Proposal

(1) The provision would clarify that the Secretary of HHS, not the head of any other federal agency, has the authority to make the final determination as to whether an individual's services constitute social security-covered employment. This would assure that all presidential appointees are covered under social security as provided in the coverage provisions of the 1983 Social Security Amendments.

(2) In addition, the provision would clarify that any civil servant who becomes covered by social security as a result of taking a mandatorily covered federal job would retain social security coverage in any subsequent federal job.

Effective Date

(1) The provision would be effective January 1, 1989.
(2) The provision would be effective upon enactment.

Cost

No cost estimate is available.

ADDITIONAL PROPOSAL TO BE CONSIDERED AT HEARING

Annual Earnings Statements (S. 2441)

Present Law

Currently, workers must contact the Social Security Administration if they want to check the amount of earnings credited to them or to receive an estimate of the benefits for which they are potentially eligible. Year-by-year earnings and benefit estimates are generally provided only for individuals who are close to retirement age.

Proposal

The Secretary of HHS would be required to provide annual statements of earnings and potential benefits to all workers covered by social security. The statements would include year-by-year earnings, OASDI contributions, and estimates for retirement, survivors, and disability benefits.

Effective Date

The proposal would be effective beginning with the year following the year of enactment.

Cost

No cost estimate is available.

II. Proposals related to Aid to Families with Dependent Children (AFDC) and Foster Care

PROPOSALS APPROVED BY THE HOUSE WAYS AND MEANS COMMITTEE FOR INCLUSION IN THE TAX TECHNICAL CORRECTIONS BILL

AFDC Quality Control (Extension of Penalty Moratorium)

Present Law

Under the AFDC program, States may be "sanctioned" by being required to pay the Federal Government the Federal cost of improperly issued AFDC benefits, as shown by quality control surveys, if they do not achieve error rates below specified levels. In April 1986, as part of P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, a 2-year moratorium was imposed on the collection of AFDC fiscal sanctions. The moratorium currently prohibits the Department of Health and Human Services (DHHS) from reducing AFDC payments to States with high erroneous payment rates. The moratorium expires July 1, 1988.

In addition, COBRA required that the Secretary of DHHS and the National Academy of Sciences conduct studies of the AFDC quality control system. These studies were to examine how best to operate the quality control system to provide (1) program managers with information that can improve the quality of administration, and (2) reasonable data on which to withhold Federal funding to States with excessive levels of erroneous payments. Both studies have been completed.

Table 1 illustrates the pending and projected sanction amounts and the DHHS and CBO projected schedules for collecting these funds under current law.

Proposal

The moratorium on the collection of quality control sanctions would be extended for one year, the collection of error rate data and review of State waiver requests by the Grant Appeals Board would continue during the moratorium period, and DHHS would be required to submit its recommendations for improving the quality control system by February 15, 1989. Specifically:

1. During the 12-month period beginning on July 1, 1988, the Secretary would be prohibited from imposing any reductions in payments to States pursuant to section 403(i) of the Social Security Act (or prior regulations), or pursuant to any comparable provision of law relating to the programs under Title IV-A of such Act in Puerto Rico, Guam, the Virgin Islands, American Samoa, or the Northern Mariana Islands. The moratorium would continue until July 1, 1989.

2. During the moratorium period, the Secretary and the States would be required to continue to operate the quality control systems in effect under Title IV-A of the Social Security Act, and to calculate the error rates, including the process of requesting and reviewing waivers.

3. Current law would be clarified to provide that the moratorium does not apply to the Departmental Grant Appeals Board and its review of the fiscal year 1981 disallowances or any subsequent disallowances. The Grant Appeals Board would be expected to consider appeals during the moratorium period. Collection of disallowances owed as a result of Grant Appeals Board decisions could not occur during the moratorium period.

4. The requirement, in current law (section 12302(c) of COBRA), that the Secretary publish regulations on restructuring the quality control systems to reflect the studies would be replaced with a requirement that the Secretary submit to the Congress, by February 15, 1989, its recommendations for a revised quality control system.

Effective Date

The provision would take effect on July 1, 1988.

Cost

CBO estimates this proposal to have no cost.

TABLE 1. AFDC SANCTION AMOUNTS AND ESTIMATED COLLECTION SCHEDULES
(dollars in millions)

Year errors were made	Estimated sanction amount (in millions)	DHHS and CBO projected schedules for collecting sanctions	
		DHHS estimate	CBO estimate
Fiscal year:			
1981	*$69		
1982	96		
1983	184		
1984	230		
1985	248	0	0
1986	355	0	0
1987	300	0	0
1988	274	0	0
1989	251	$349	0
1990	222	834	$46
1991	201	825	342
1992	178	222	606
1993	153	201	184
Total	$ 2,761	$2,431	$1,178

* Sanction notices issued to States. Amount has been reduced to reflect waivers by Secretary of DHHS.

Source: Department of Health and Human Services and Congressional Budget Office. Compiled by staff of the House Committee on Ways and Means.

Foster Care Independent Living Initiatives

Present Law

The Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) authorized funds for State independent living programs for fiscal year 1987 and fiscal year 1988. These programs are to provide services to help children age 16 or over in the AFDC foster care program make the transition from foster care to independence. Children eligible for services under the program are those who are receiving assistance under the Title IV-E foster care program (which provides Federal assistance for foster care maintenance payments). Title IV-E assistance is limited to those foster care children who would have been eligible for AFDC before they were removed from their home and placed in foster care.

The Secretary of Health and Human Services is required to provide Congress with a report on the program by July 1, 1988. The authorization level for this entitlement is $45 million for each of the two fiscal years. States did not begin receiving funds under the program until July 1987.

Proposal

The current authority for State independent living initiatives would be extended for one year (through fiscal year 1989), with an authorization level of $45 million. The following additional changes would be made:

1. States would be permitted to spend fiscal year 1987 carry-over funds in fiscal year 1989.

2. States would be permitted to use funds under the foster care independent living program for services for two groups of children in addition to those authorized under current law (i.e., children who are receiving assistance under the Title IV-E foster care maintenance payment program): any or all children in foster care who are at least age 16; and, for up to 6 months after foster care payments or foster care ends, children previously in foster care and whose care or payments ended after the child attained age 16.

3. Independent living initiative funds could not be used for the provision of room and board.

4. The definition of case review system under Title IV-E would be modified to clarify that the 18-month dispositional hearing may also consider issues related to independent living.

5. State reports would be due on January 1 of each fiscal year; and a Federal report would be due on March 1, 1989.

Effective Date

The authority for States to include non-AFDC foster care children in the independent living program and the prohibition on the use of funds for room and board would be effective on enactment. The remaining provisions would take effect on October 1, 1988.

An identical measure has been introduced by Senator Moynihan as S. 2461.

Cost

CBO estimates this proposal to cost $36 million in fiscal year 1989 and $ 9 million in fiscal year 1990.

ADDITIONAL PROPOSAL TO BE CONSIDERED AT HEARING

Moratorium on Emergency Assistance/Special Needs Regulations

Present Law

Under current law, States may operate an emergency assistance program for needy families with children (whether or not eligible for AFDC), if the assistance is necessary to avoid the destitution of the child or to provide living arrangement in a home for the child. The statute authorizes 50-percent Federal matching funds for emergency assistance furnished for a period not in excess of 30 days in a 12-month period. Current regulations state that Federal matching is available for emergency assistance authorized by the State during one period of 30 consecutive days in any 12 consecutive months, including payments which are to meet needs which arose before the 30-day period, or are for such needs as rent which extend beyond the 30 day period.

Under the regular AFDC program, current regulations also allow States to include in their State standards of need, provision for meeting "special needs" of AFDC applicants and recipients. The State plan must specify the circumstances under which payments will be made for special needs.

On December 14, 1987, the Department of Health and Human Services published in the Federal Register a proposed regulation which would have restricted the use of AFDC emergency assistance funds for homeless families and would have limited States' authority to make payments for special needs of AFDC recipients. Specifically, the proposed regulations would have prohibited special needs based on the type of housing and would have prohibited emergency assistance to cover needs over a period in excess of 30 days per year.

The Omnibus Budget Reconciliation Act of 1987 established a moratorium under which the Secretary of Health and Human Services is directed not to implement the proposed regulations or otherwise modify current policy with respect to the matters address in those proposed regulations prior to October 1, 1988.

Proposal

The proposal would extend the moratorium on changing current policy with respect to emergency assistance and special needs for homeless families.

Cost

CBO estimates this proposal to have no cost.

MICHAEL C. CAROZZA

DEPUTY COMMISSIONER FOR POLICY AND EXTERNAL AFFAIRS

SOCIAL SECURITY ADMINISTRATION

Mr. Chairman, I am pleased to have this opportunity to appear before you to discuss the Social Security Administration's initiative to provide much improved personal earnings and benefit estimate statements to workers who request such information. I also wish to discuss a variety of Social Security legislative proposals currently under consideration by the Congress. I particularly want to mention some proposals not included in the Ways and Means Committee bill, especially one which is designed to improve Social Security protection for adopted children.

Commissioner Hardy would be here today except for a longstanding commitment to be out of the country. Let me say, however, Mr. Chairman, that all of us in the Social Security Administration appreciate your leadership in restoring both Social Security's financial stability and public confidence in the program.

INTRODUCTION

Rebuilding confidence in Social Security and educating the public as to what they can expect from the program have been among Commissioner Hardy's highest priorities. She strongly believes the public can neither fully appreciate Social Security nor evaluate their plans for personal financial security without information about their Social Security benefits. For this reason, the Social Security Administration has aggressively pursued efforts to inform the public about Social Security's financial soundness and its value to workers of all ages. One such effort is a national public service advertising campaign in partnership with the Advertising Council. This multi-media campaign began in February and uses the theme, "Social Security: It Never Stops Working."

PERSONAL EARNINGS AND BENEFIT ESTIMATE STATEMENT

Another major effort will begin next month when SSA inaugurates a new public service that will explain in personal terms what Social Security means to individual workers and their families. We will be issuing a new personal earnings and benefit estimate statement, available on request, which will be a substantial improvement over the current statements. But before I describe the new form, I would first like to set it in context by explaining the nature of the earnings statements we currently furnish to those who ask for them.

SSA sends out about 3 million earnings statements each year to those workers who want to check on their earnings records. We have always encouraged workers to check on the status of their earnings records, usually at 3-year intervals, so that they can request any needed corrections within the general statutory limit of 3 years, 3 months, and 15 days after the close of the year in which earnings were received. The current statement has the primary objective of furnishing information about the earnings recently recorded on a worker's earnings record. Basically the letter workers now receive from SSA tells them how much was recorded on their record in each of the most recent 3 years and shows an aggregate sum for all previous years. This form works well if a worker's inquiry is to find out if his last 3 years' earnings have been accurately recorded.

The new statement has a much broader objective. It is a clear, concise, and detailed statement, available to anyone who requests it, and it will serve three vital purposes.

- First, it lets people view and, if necessary, correct their earnings records promptly. The new statement contains a year-by-year display of a worker's earnings from 1951 through the most recent year. This detailed information will allow a worker to make sure that his earnings record is correct so that his future benefits will be based on all his covered earnings.

- Second, it provides workers with comprehensive benefit estimates, putting a dollar and cents value on the full package of protection that Social Security offers.

- Third, the new statement will help people do their own financial planning. They will learn what Social Security can and can't do, so that they will better be able to plan supplemental sources of retirement income.

The new form contains a wealth of information about Social Security, including disability and survivors benefit estimates, realistic retirement benefit estimates for both reduced benefits at age 62 and for benefits at ages 65 and 70, and the number of credits the worker needs to be insured for all types of benefits. In addition, the form contains information about key aspects of Social Security, written in simple language and organized to make the information more useful and accessible to our customers.

Because we believe the new form and the information on it are so important, we went to great lengths to make sure we put it together in a manner that is easy to read and to understand. We went to a sample of potential users to find out what they wanted and to get their opinions about the new form.

We interviewed workers in New York, St. Louis, Missouri, San Jose, California, and 10 other cities as well, and learned ways we could make the benefit statement better. We also plan a series of telephone surveys immediately before we start production of the new statements to make sure that the new benefit estimate system is functioning properly.

Requests for benefit estimates have always been one of our most popular forms, and we expect that usage will be even greater once people become aware of our improved package. We estimate that 6 million people each year will ask for the new benefit statement, which is double the number who asked for the old version. The new statement is a four-page foldout form. We plan to respond to requests for the new statement within 3 weeks at a total cost of 35 cents per statement, including postage.

I think it is important to mention that the statement we will be producing for 35 cents is the same kind of product that some advertisers have tried to sell to workers for $10 or more per copy.

SOCIAL SECURITY PROVISIONS AGREED TO BY WAYS AND MEANS COMMITTEE

I would now like to turn to the Social Security provisions that the Ways and Means Committee agreed to on June 21 and 22 in its markup of H.R. 4333, the tax technical corrections bill.

We are pleased that some of the Social Security provisions in the Administration's legislative package for FY 1988 (introduced by Representative Archer as H.R. 2660) were included in the bill. These provisions include:

- Simplification and improvement of the Social Security retirement earnings test in the year a beneficiary dies to allow for use of the full annual exempt amount.

- Use of the certificate-of-election procedure in certain cases where entitlement to reduced widow's or widower's benefits follows entitlement as a wife or husband.

- Technical revisions in the calculation of the Social Security windfall guarantee provision applicable to "double dippers" so that it will be based on pension amounts at the time of first concurrent entitlement, rather than eligibility.

- A requirement that all future beneficiaries have their own Social Security numbers.

- A consolidation of two recurring reports to Congress concerning continuing disability reviews under the disability program into one annual report.

I might mention that, with regard to the last two provisions, the Ways and Means Committee version differs slightly from H.R. 2660. The Administration prefers the H.R. 2660 provisions.

There are several other relatively minor or technical provisions that we support or have no objection to. They are as follows:

- Authorize payment of the $255 lump-sum death payment to the estate of a widow or widower who dies without receiving the lump-sum death payment he or she was eligible for.

- Clarify that anyone who elected coverage under the Federal Employees Retirement System (FERS) on or before December 31, 1987, would be exempt from the Social Security government pension offset, even if that person retired before FERS coverage became effective.

- Extend to employees the present law exemption from Social Security which now applies to only self-employed members of certain religious sects opposed on religious grounds to participation in Social Security.

- Suspend Social Security benefits to individuals against whom a final order of deportation has been issued on the basis of Nazi activities.

- Exempt workers who retire before January 1, 1989, from the provision which covers under Social Security the employer cost of group-term life insurance.

- Extend for 1 year the provision that continues up to an administrative law judge decision the payment of disability benefits to beneficiaries who appeal a medical cessation determination (pending a report to Congress on the effects of the provision.)

There are, however, several provisions of the Ways and Means Committee bill which we find objectionable on program grounds or because of cost and/or administrative considerations.

- Blood donator locator service (BDLS). This provision would require the Secretary of Health and Human Services to establish a BDLS, administered by the Commissioner of Social Security. The BDLS would be responsible for furnishing

public health agencies, public agencies that regulate blood donation, and blood banks with the most current address that Federal records show for donors who are identified as being infected with the human immunodeficiency virus, the cause of AIDS.

We have analyzed the need for this service carefully in consultation with the Centers for Disease Control and the Food and Drug Administration. Our firm conclusion is that this provision would unnecessarily duplicate current procedures for locating infected blood donors, impose additional administrative burdens on blood banks and SSA, divert resources that could be used more effectively in disease prevention and treatment, and could adversely affect public attitudes toward voluntary blood donation. No information in Federal records could be expected to be more current than that given by donors at the time of donation since, for example, SSA's information is often several years old and addresses on W-2s are 6 to 18 months old.

- Public members of the Boards of Trustees. This amendment would authorize a public member of the Boards of Trustees to serve beyond the expiration of his or her term until the President appoints and the Senate confirms a successor. We object to this provision because permitting a public member to serve indefinitely beyond the expiration of the appointed term could invite manipulation of the appointment process, either by the Administration in nominating public members or by the Senate in confirming public members.

- Corporate directors. The bill would also change the Social Security treatment of the earnings of corporate directors. We oppose this provision because it would treat these earnings differently for Social Security tax and earnings test purposes and thus make the Social Security program more complex, more confusing to the public, and more difficult to administer. Under present law, their earnings are treated for Social Security tax, coverage, and retirement earnings test purposes as received in the year in which the services are performed. The provision in H.R. 4333 would, instead, treat these earnings as received when paid for Social Security tax and coverage purposes, but it would continue to treat them as received when earned for purposes of the earnings test.

- Windfall elimination provision. Under the Ways and Means bill, the Social Security windfall elimination provision--under which a worker's Social Security benefits are reduced due to receipt of a pension based on work not covered under Social Security--would not apply to workers with 25, rather than the current 30, years of Social Security coverage. (Phased-in reductions in Social Security benefits would apply to people with 21-24, rather than the current 26-29, years of coverage.) This provision is similar to a House-passed provision in last year's reconciliation bill which was dropped in conference. The provision would increase Social Security program costs by $20 million over 5 years. This provision appears unnecessary from a program standpoint; 30 years does not seem an unreasonable period of attachment to covered employment for purposes of exemption from the windfall elimination provision.

- Interim benefits. This provision, also included in the House-passed reconciliation bill last year and dropped in conference, would require payment of Social Security and SSI

disability benefits following a favorable administrative law judge (ALJ) decision where Appeals Council review of the ALJ decision is delayed beyond 110 days. While we agree that extended delays may be unconscionable and may cause hardship, we do not support this solution. The answer lies in improved administrative practices--which we are working on diligently --and not in mandatory processing times.

There are also several provisions in H.R. 2660 dealing with expired authorities that have not been included in the Ways and Means package and that we believe should be enacted:

- Evaluation of pain. The 1984 disability amendments provided an explicit statement in the law explaining how pain and other symptoms were to be evaluated in Social Security and SSI disability determinations. Before enactment of this standard, the Federal courts did not always adhere to the Secretary's regulatory policy on evaluating pain. After enactment, courts deferred to the statutory standard, thereby halting inconsistent interpretations among circuits.

  The statutory standard on evaluating pain expired in 1986. SSA is currently working on experiments and studies recommended by the congressionally mandated Commission on the Evaluation of Pain. Extending the temporary pain provision would remove any uncertainty about the current pain standard and would give SSA time to complete the studies and experiments and make a recommendation on a permanent standard to the Congress.

- State noncompliance. The 1984 disability amendments also contained a provision, that expired in 1987, which required the Secretary of Health and Human Services to assume the functions of a State disability determination service not later than 6 months after a finding that it was not complying with Federal law and guidelines and to make any finding of noncompliance within 16 weeks after the State's failure to comply first came to the Secretary's attention. Making this provision permanent would assist the Secretary in responding swiftly and definitively to a State's failure to comply.

ADMINISTRATION'S FY 1989 PROPOSALS

I would also like to call the committee's attention to a package of four proposals that we sent to the Congress on June 6. These proposals had not been advanced at the time of the Ways and Means Subcommittee on Social Security markup and were not considered in the full committee markup in June. However, we urge this committee to consider these provisions.

- Adopted children. First, there is a provision under which the adopted child of a retired or disabled worker would be treated like the worker's natural child, so that benefits would be payable without a special test of dependency (or relationship to the worker prior to disability or retirement). Although this provision involves some cost--$10 million initially, and $80 million over 5 years--we believe that it is justified in terms of removing unnecessary and obsolete barriers to adoption. It also has the potential for strengthening family life. This proposal is squarely in line with President Reagan's September 2, 1987, Executive order on the Family (Executive Order 12606) and would strengthen Social Security protection for adopted children.

- Miscellaneous receipts. A second proposal would strengthen trust fund integrity by assuring that miscellaneous receipts generated by administration of the Social Security program--such as penalties, sale of assets, and receipts generated by the bulk conversion of dollars into foreign currency for direct deposit of benefit payments in foreign countries--would be credited to the trust funds rather than to the miscellaneous receipts account of the general fund of the Treasury.

- Self-employment income. The package also includes a provision to clarify that a self-employed person's earnings record can be corrected after the expiration of the statute of limitations only if the person or his representative has filed a tax return within the statutory time limit. This clarifying change is needed to offset the potential adverse effects of a court decision that a self-employed person may be credited with self-employment income on the basis of information returns filed by a third party.

- Magnetic media. The fourth and final provision I wish to mention would authorize an extension to payroll agents of the requirements for reporting of earnings by magnetic media. At present, only employers can be required to report earnings by magnetic media. Under this provision, the Treasury Department would have the authority to issue regulations to increase magnetic media reporting by requiring reports of low-volume employers who use payroll agents to be transmitted via magnetic media.

SSI PROGRAM

In addition to the legislative proposals I have already mentioned, I would ask that you also consider a proposal that is needed to correct an anomaly in the SSI program. The anomaly results from interaction of cost-of-living adjustments with retrospective monthly accounting and the treatment under the SSI program of in-kind support and maintenance.

As you know, an SSI recipient who lives in the household of another and receives in-kind support and maintenance from the householder has his benefit reduced by an amount equal to one-third of the Federal benefit rate. Similarly, when a person lives in his own household and receives in-kind support and maintenance his benefit rate is reduced by a presumed maximum value of one-third of the Federal benefit rate plus $20 (the amount of the general income exclusion).

Each time there is an SSI cost-of-living adjustment (COLA), SSI benefits for January and February are calculated using the increased Federal benefit rate, but under retrospective monthly accounting--which uses income from the second prior month in determining the benefit amount for the current month--the value of the one-third reduction and presumed maximum value used in calculating the January and February benefits are based on the Federal benefit rate applicable to November and December. As a result, SSI recipients whose SSI benefits take into account the receipt of in-kind support and maintenance get a higher-than-normal benefit payment for January and February. Their benefit amounts decrease 2 months later when the COLA-adjusted Federal benefit rate becomes the base for determining the value of the one-third reduction and the presumed maximum value.

We urge you to enact legislation which would correct this situation by requiring the use of the COLA-adjusted Federal benefit rate in determining the values to be used in counting in-kind support and maintenance for benefits paid for the month the COLA occurs and for the following month. We would be happy to provide you with assistance in drafting legislative language to accomplish this.

CONCLUSION

In conclusion, Mr. Chairman, I want to thank you and your colleagues on the subcommittee for this opportunity to appear before you to discuss the new personal earnings and benefit estimate statement and proposed amendments to the Social Security and SSI programs. I believe that the new earnings and benefit statements represent a major improvement in the quality of service we provide.

Let me add that the proposals tentatively approved by the Committee on Ways and Means would cost some $20 million in FY 1989, and some $170 million in FY 1989-93. In light of the bipartisan budget agreement, the Administration believes proposals that increase cost need to be accompanied by offsets.

Statement of
Joseph F. Delfico
Senior Associate Director
Human Resources Division

Mr. Chairman and Members of the Subcommittee, I am pleased to be here today to testify on providing periodic personal earnings and benefit statements to workers covered by social security.

At the outset I would like to say that we believe that there is a need to provide individuals with better information about their social security earnings and benefits. Our position stems from two recently completed GAO studies[1] which cover different topics but are related to your interests. I will describe each briefly and show how such statements could affect the problems we raised in our reports.

A clear understanding of future retirement income is essential for planning for income security during retirement years. Yet, we have found that a significant number of workers know very little about the most important aspects of their pension plans--their eligibility for early or normal retirement. For example, about 70 percent of the 25 million workers in defined benefit pension plans lacked knowledge of when they would be eligible for normal retirement.

Second, we have found that workers have errors in their earnings records at the Social Security Administration (SSA). For the period 1978-84 SSA had recorded $58.5 billion less in workers earnings than the Internal Revenue Service had recorded as being paid. We estimated that as many as 9.7 million persons could have uncredited earnings and a sample of affected beneficiaries could lose an average of nearly $17 a month.

Workers' Knowledge of Pension Plans

Employer-sponsored pensions are one component of the retirement income security system, supplementing social security retirement benefits and private savings. Workers are likely to be better able to plan for retirement if they understand their pension plans' eligibility requirements for early and normal retirement benefits as well as their expected social security retirement benefits.

Our work with private pension plans raised questions about whether many workers are planning adequately for retirement. Few workers receive individualized benefit statements about their pension status and benefits like those the Committee is considering, although workers do receive general plan information in Summary Plan Descriptions required by ERISA. Our review indicated that millions of workers don't understand their plan's early and normal retirement eligibility requirements as described in their plan documents. Without accurate information about their pension plans, workers may change jobs or retire earlier than they would find optimal had they had better pension information. Given the complexities of the social security system, it is likely that social security covered workers also lack an adequate understanding and could make similar mistakes.

We analyzed the data in the 1983 Survey of Consumer Finances (SCF) to determine how many workers knew about their plan's retirement provisions. The University of Michigan's Survey Research Center conducted the SCF for the Board of Governors of the Federal Reserve System. It collected comprehensive asset and liability information for a national sample consisting of 3,824 U.S. households in 1983. The center also collected detailed information on 1,012 pension plans sponsored by public and private employers of those workers surveyed.

Among workers in defined benefit plans with an early retirement option in 1983, 41 percent were either incorrect (an estimated 6 million workers) or did not know (3 million workers) about their early retirement eligibility, according to our projections from SCF data.

We also found that workers did not know when normal retirement benefits would be available. Of the workers in defined benefit pension plans in 1983, about 72 percent were not correct about when they would be eligible for normal retirement benefits. This represents about 18 million workers. Although the lack of benefit knowledge of workers covered by private pension plans is not directly an SSA problem, we believe periodic social security statements with earnings and benefit information would heighten, worker awareness of retirement planning needs. Such statements could spur workers to explore how their private system would benefit them.

Uncredited Earnings

Workers' eligibility and entitlement to social security benefits are based on the earnings recorded in Social Security accounts. If the Social Security Administration fails to record all or part of an individual's annual earnings, the Social Security benefits it calculates for such individuals could be too low.

Employers report employees' earnings to SSA and the Internal Revenue Service (IRS) at different times and for different purposes and differences in these reported earnings sometimes occur. When differences are detected, SSA and IRS reconcile them to assure that workers receive proper credit for social security entitlement and benefit purposes or that IRS collects all social security taxes that are due. Recently, we found that the agencies have made slow progress in reconciling these earnings differences.

From 1978 through 1984, SSA recorded about $58.5 billion less in employees' earnings than IRS. Although this represents only about 0.8 of 1 percent of all earnings that SSA recorded during this period, the number of persons and impact on those affected by uncredited earnings can be significant. A nonprojectable sample of current beneficiaries reviewed by GAO showed that affected beneficiaries lost on average nearly $17 a month. Although we do not know the actual number of individuals whose benefits are affected, we do estimate that the records of 9.7 million individuals could have uncredited earnings.

We recommended that SSA and IRS develop and pursue a strategy for examining unreconciled employers' earnings reports and report their plans to Congress. While IRS and SSA have made some progress in developing this strategy, it has not been as rapid as the agencies' expected.

The Usefulness of Periodic Personal Earnings and Benefit Statements

In the studies discussed in this testimony, we highlighted first, a need for better information on retirement income eligibility and availability to facilitate retirement planning and second, the need for accurate earnings records at SSA. Legislation providing for periodic personal earnings and benefit statements will address the first issue--better information for retirement decisions. We recognize, however, that providing information doesn't necessarily mean that workers will read it, understand it and act upon it--but it is a first step in assuring that better retirement decisions are made. In addition, it could help to remedy the effects of the main problem identified in our report on uncredited earnings. Periodic earnings statements would give workers new information to help them identify errors in their social security accounts and initiate corrective action.

Any legislation which would require SSA to send workers a statement of their posted annual earnings and an estimate of retirement, survivor and disability benefits should be drafted with an understanding of the operational problems that need to be resolved and associated costs. Also, the Committee should consider a project that SSA has underway to (1) provide this type of information to those who request it and (2) examine whether it is feasible and useful to routinely provide it to all covered workers. I would like to briefly discuss each of these aspects.

One operational consideration involves SSA's workload. Requiring that every worker be notified will impose an additional workload on an agency now experiencing major staff cuts. Although our work shows that the staff cuts have not yet affected service, providing such statements will create a new workload--setting up a competition for resources. If this occurs we believe that SSA should first focus resources on clearing up the past uncredited earnings discussed earlier. This should be a top priority of the agency.

Another operational problem that needs to be resolved is how to obtain accurate mailing addresses of workers. SSA has addresses for beneficiaries but not for workers. Obtaining about 120 million up-to-date addresses will pose a major impediment to implementation.

IRS maintains mailing address information in various taxpayer files. However, these files are considered tax data and legislation may be needed for SSA to access them. Also, because (1) people move and do not always notify IRS and (2) others do not always file tax returns every year, some addresses will not be accurate.

A third consideration involves determining how and for whom SSA will estimate future earnings when estimating future retirement benefits. Such an estimate is necessary to calculate retirement

benefits. Because of the way social security benefits are determined, the benefit estimate is likely to be sensitive to the future earnings estimate SSA uses--particularly if the person has many years to work before becoming eligible. A highly inaccurate benefit estimate would defeat the objective of providing better retirement information. This matter will require further study.

With regard to cost, very little is known (other than postage) because it is uncertain how much staff time will be spent answering questions that arise from the statement. The magnitude of this increase is unknown, but based on our estimate of 9.7 million workers who potentially could have uncredited earnings, the additional workload may be large. Also, others will likely have questions relative to their benefit estimates. The potentially large workload impact and operational problems suggest that a phased approach might be the best way to get a better idea of costs and feasibility.

Lastly, I would like to briefly summarize a current SSA initiative that should be considered in the Committee's deliberations. It is a multiphased project directly related to the Committee's interest in providing better retirement information. The first phase is scheduled to become operational in August 1988. Under phase I SSA would provide persons requesting earnings information with a year-by-year accounting of their social security earnings and taxes paid. In addition, it would provide estimates of their social security retirement, survivors and disability benefits. The estimated benefits would be based on future earnings as estimated by the inquiring individual. The benefit estimates would cover a variety of benefit situations. For example, the statement would contain estimates of retirement benefits at ages 62, 65, and 70, and estimate survivor benefits for situations involving a child, a

spouse with a child, and a spouse with two children (the maximum family benefit payable).

The second phase involves exploring, through a pilot test, whether it is feasible and useful for SSA to periodically send similar statements to all workers. As currently envisioned, the pilot test will evaluate the operational and cost considerations previously mentioned along with other potential problems. If found desirable, SSA plans to mail the statements, starting in October 1991, to all 120 million workers on a 3-year cycle, thus mailing about 40 million statements annually.

We have not evaluated SSA's planning efforts for this initiative in any depth and cannot comment on the reasonableness of its timing or cost effectiveness. However, we support the plans for a phased approach.

In summary, we believe that there is a need to provide persons with better information about their social security earnings and benefits. However, we believe an initiative of this magnitude should be phased in over a period of years. This would allow SSA flexibility to identify and address operational problems and consider benefits and costs.

This concludes my testimony. I will be happy to answer any questions you may have.

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[1]PENSION PLANS: Many Workers Don't Know When They Can Retire (GAO/HRD-87-94BR), August 12, 1987) and SOCIAL SECURITY: More Must Be Done To Credit Earnings Of Individuals' Accounts (GAO/HRD-87-52, September 18, 1987)

DREW ALTMAN

COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF HUMAN SERVICES

- Mr. Chairman, it is good to see you again. Governor Kean asked me to send you his regards, and of course, his hopes that we will see a welfare reform bill passed and signed by the President in the near future.

- I appreciate the opportunity to testify today. Because homelessness has reached such serious proportions in our State, I will focus my remarks on Emergency Assistance this afternoon.

- In dealing with the problem of the homeless over many years, there is nothing I've found more frustrating or alarming than the cutback in Emergency Assistance planned by the Department of Health and Human Services.

- It is not simply the impact this cutback would have -- it would pull the rug out from under the entire Emergency Assistance program in New Jersey and cost us about $10,000,000 next year...but it is the message it would send as well.

- What this action says is that the federal government no longer wants to be an equal partner with state and local government in addressing this problem. As I said to you in Brooklyn a few months ago -- Washington and the states are behaving "like ships in the night" on this issue: we are trying to do more, while Washington is trying to do less.

- In New Jersey, in the last year and a half, we have quadrupled our budget for Emergency Assistance and more than tripled the number of families served. We are now serving approximately 16,000 families (48,000 women and children overall) through our Emergency Assistance Program each year.

- Although we've modified Emergency Assistance to prevent homelessness wherever possible -- for example, by paying up to three months back rent and mortgage payments -- we still find that half of the families served through Emergency Assistance require emergency placement. 90% of these families are placed in welfare hotels at a cost of $1500 a month.

- I think we would all agree that welfare hotels are the worst possible answer to the homeless problem. They are disconnected from the service system needed to help homeless families; they are the worst possible environments for children; and they are absurdly expensive -- costing two times what public shelter costs and five times what an average AFDC family pays in New Jersey to rent an apartment.

- What we want to do in New Jersey is fundamentally change Emergency Assistance so that rental assistance, family shelters, family foster care, and other transitional housing arrangements become the linchpins of our Emergency Assistance program. We want to get out of the welfare hotel business.

- In accomplishing this we view rental assistance as particularly important. If we could convert welfare hotel payments for the average family to rental assistance, we could support a family in an apartment for up to a year and a half.

- During this time we would enroll that family in our welfare reform program -- REACH -- and work with them to move them off of public assistance on a permanent basis. We have already, in fact, linked Emergency Assistance with welfare reform by instructing our counties to make homeless families their top priority for REACH.

- Recently, we had some experience with this approach. At State expense we converted Emergency Assistance to rental assistance for 940 families whose five months of Emergency Assistance had run out. In just a short period of time more than 700 of these families have been able to move out of welfare hotels and into apartments with this aid.

- Another example of a better approach: on my desk is a proposal from a major community-based organization in Newark to create a one hundred room transitional housing unit for homeless families providing counseling, child care, on-site health and mental health services, and transportation, in addition to basic shelter -- for the same price as a welfare hotel.

- We also want to involve the private sector and community-based organizations much more in working with government to address the problems of public assistance clients on Emergency Assistance.

  - In every county we have established a comprehensive emergency assistance committee bringing together shelter operators, advocates, human services agencies and local government.

  - These committees will oversee the planning and implementation of our new Emergency Assistance program at the local level.

- We would like to be in a position in New Jersey to literally outlaw the use of welfare hotels for Emergency Assistance in a few years -- but it will take cooperation from the federal government if we are to reach that goal.

- First, we need the moratorium on the 30 day limit regulation extended so that the federal government continues to match state Emergency Assistance dollars. If the proposed reduction in Emergency Assistance is implemented, we would experience a 25% cut in Emergency Assistance funds. <u>This would gut our entire Emergency Assistance program</u>.

- Second, we need the flexibility to use Emergency Assistance to create alternatives to welfare hotels...there are two ways this can happen:

- The course we would prefer is to see legislation enacted which would grant states the resources and flexibility they need, in return for a specific commitment to phase-out placements in welfare hotels.

- This legislation could, for example, establish set-aside funding as part of the IV-A entitlement to be used to reduce the number of placements in welfare hotels.

  - We feel sufficiently strongly that this is the direction to go that if these resources became available, we would accept the requirement that all placements in welfare hotels would be terminated within a five year period of time.

- A second approach, as an alternative to a IV-A set-aside, would be a waiver provision mandating that HHS grant states the ability to use Emergency Assistance more flexibly, with the now familiar caveat that states demonstrate that doing so would not cost the federal government more than they would otherwise spend.

  - The vagaries of waiver process are such that we would greatly prefer legislation, but we would consider a waiver provision if that were the only way to go.

- In summary, as we see it in New Jersey, we need not only to extend the moratorium but to fundamentally reform Emergency Assistance as well. If that is not possible we would prefer to see the moratorium extended for one year in order to provide some assurances to states that funding will continue to be available.

- Mr. Chairman, because of time constraints, and as an expression of faith in my colleagues -- with regard to quality control and independent living let me simply say "me too".

  - New Jersey supports most of the recommendations of the National Academy of Sciences study on quality control and S. 2522, which includes many of those recommendations, as well as an extension on the moratorium if necessary.

  - New Jersey also supports S. 2461, which reauthorizes the independent living program and would expand eligibility to children not Title IV-E (foster care) eligible.

- I want to thank you for the opportunity to testify. As in welfare reform, we stand ready to help in this area in any way we can.

STATEMENT OF SENATOR DANIEL J. EVANS

Mr. Chairman, I am pleased to have this opportunity of testifying at today's hearing on AFDC quality control. We now are faced with the task of following through on our earlier legislative efforts. In 1985, I testified before the Committee on this very issue. In response, the Committee adopted provisions of legislation I had introduced earlier that year calling for a comprehensive review of the AFDC quality control system. You also expanded my proposal for a study and moratorium on the collection of penalties to include Medicaid.

In the original legislation, we set out a two-year time period within which reform of the quality control system would take place. Accordingly, we called upon the National Academy of Sciences to complete within one year, a comprehensive review of the system's existing short-comings. Congress then would have an additional year to review the findings of the Panel and enact appropriate legislative reform. We concluded that it was not fair for Congress to continue levying huge penalties against the states under a system whose validity had been challenged widely. Thus, we placed a two-year moratorium on the collection of fiscal penalties.

It should come as no surprise to anyone who follows the legislative process that we have not been able to keep to our original schedule. The Academy needed more time to complete its review and subsequently, Congress needs more time to deliberate on the Panel's recommendations. Our original two-year moratorium, however, expired on July 1, 1988. Not only is it incumbent upon us to now extend the moratorium, but we must move ahead with enactment of comprehensive reform.

By enacting the original moratorium, Congress recognized that there were serious flaws in the existing quality control systems in federal income assistance programs. Congress called into question the validity of statistical procedures used to measure state performance. Congress stated that the purpose of quality control is not to raise federal revenues. That it was not to shift program costs from federal to state budgets, and that its purpose was not to reduce administrative resources which ironically will result in higher program errors in the future. We acknowledged that the purpose of quality control is to provide states with an effective management tool so that program administration can be as cost-efficient as possible. It is within this conceptual framework that we must approach reform of the quality control systems.

Mr. Chairman, the time to fix the quality control system is now. As I have said on a number of occasions in previous testimony on this issue, there is something very wrong with a system which indicates that every state in the Union is an inefficient program manager of federal income assistance programs. In 1984, alone, 45 states exceeded the statutory tolerance level of 3%. From FY'81 to 84, a total of $597 million in penalties is pending against the states. After 4 years of official sanctions, all but 2 states have received a sanction for their error rates in the AFDC program.

It is time to stop recounting these sobering statistics -- everyone acknowledges the problem. We now are in a position to move ahead with reform. Recently, I introduced S. 2522 which would establish a comprehensive system for quality improvement in AFDC. The legislation is within the jurisdiction of this Committee. It is consistent with the recommendations made by the NAS as well as responsive to the concerns of the states. I would like to take this opportunity to describe the major elements of this proposal.

First, let me comment briefly on the NAS report. It only underlined Congress' conclusion that the quality control system is in dire need of reform. I endorse the spirit of the Panel's recommendation's. Overall, I thought it was a comprehensive and thoughtful treatment of a very complex and difficult subject. Specifically, they concluded, "that the AFDC and Medicaid QC systems lack many of the elements of a comprehensive quality improvement system...(t)he QC systems offer little to state and local program managers in support of continued improvement in administration and in the achievement of other program objectives."

The report concluded that the existing system is replete with problems that impede states from becoming better program managers. It calls for an error rate that will take into account regional differences such as caseload and population. It recommends that a broader definition of error be used to measure the important policy objectives of quality control. It calls for a system that will provide an overall indicator of state performance. It envisions that only the extremely bad states will receive fiscal penalties and only the very good states will receive incentive payments. Most important, it recognizes that quality control is a management tool, not a federal revenue raising device.

Mr. Chairman, my legislation adopts the general approach advocated by NAS by requiring states and HHS to negotiate performance standards for program administration. Included in this effort would be the elimination of the existing two-tiered sampling system. HHS and the states should agree on one sample and how it will be made. It will save sparse state resources and hopefully it will foster a more cooperative atmosphere between the states and the federal government.

I concur with NAS that we should reject the notion of a national tolerance level. In its report the panel concluded, "that the current performance standards are not scientifically grounded and ignore state-to-state differences in caseload mix that may be beyond the control of state administrators and that may influence measured performance."

Instead, we should allow a state's error rate to vary according to population density, caseload volume and composition. For example, my bill establishes a standard deviation percentage so that a state's error rate can be adjusted downward if it has an exceedingly high caseload volume for a given quarter or if the caseload composition consists of complex cases such as those with earned income.

It provides a similar adjustment for states with large populations. My proposal allows an adjustment in the tolerance level for standard metropolitan statistical areas. The SMSA is a statistic established by the Bureau of the Census to show where population density is the greatest in the nation. It measures not only the population of major cities but also of surrounding areas.

I do disagree with the panel's conclusion that the midpoint of the confidence interval provides the most accurate determination of a state's actual error rate within the statistical range. I understand this conclusion is premised on the belief that the federal government should have to shoulder the entire risk of administering income assistance programs. Stated differently, a state should not be given the benefit of the doubt that its error rate falls below the midpoint. I believe the states should be given the benefit of the doubt. They have the responsibility of administering federal programs which take care of the poor -- a national responsibility. My legislation would advocate use of the lower bound of the confidence interval as the

most accurate and equitable measurement of state error rates. This position was endorsed in a 1981 report on federal income assistance programs by NAS.

NAS recommended that we broaden the measurement of performance beyond overpayments. Thus, a state's tolerance level would be adjusted upward by an appropriate percentage for its underpayment rate.

My legislation includes "hold-harmless" periods for legislative and administrative changes that affect program eligibility. This provision will allow the caseworker on the frontline time to assimilate the plethora of information he or she has to know to make a proper eligibility determination. In the past, this has been a large contributing factor to error rates.

I, along with NAS, feel strongly that incentives, as well as sanctions, should be featured in any new quality control system. Thus, my proposal includes an incentive payment program to reward exceptional state performance. Specifically, it would give an incentive payment to states with an error rate less than 3 percent. This payment would be equal to one-half the amount the federal government saves because a state's error rate is below 3 percent.

Mr. Chairman, we have made significant progress. The findings of the NAS study are detailed and significant. We now are in a position to initiate substantive reform. I believe we can accomplish this before the end of the 100th Congress. For example, I note that according to CBO's revised estimates, nothing will be collected from the states in AFDC penalties for fiscal year 1989. This estimate gives us a window of opportunity to accomplish reform in a deficit-neutral manner. If we wait until fiscal year 1990 or fiscal year 1991, the amount anticipated in collection begins to climb again. Thus, the longer

we delay, the more difficult the task becomes. The number of states subject to fiscal penalties inevitably will reach 50, the amount of money pending in penalties will climb. States will not be able to improve their management efficiency with a continued drain on their dwindling resources. If they are forced to pay sanctions by our inability to act, they will be paid out of state program budgets. And in the end, we will end up hurting the program beneficiaries -- the very people we are trying to help.

In conclusion, Mr. Chairman I commend you for holding hearings on this important issue. I support extension of the moratorium but only as a last resort. I believe we should concentrate our efforts on moving ahead this year with substantive reform.

RUTH MASSNGA

SECRETARY

MARYLAND DEPARTMENT OF HUMAN RESOURCES

I would like to thank the Chairman and the other members of the subcommittee for allowing me to present Maryland's views on (1) the reauthorization of the Foster Care Independent Living program, (2) extending the moratorium on the collection of AFDC quality control sanctions, and (3) extending the moratorium on the implementation of regulations for the AFDC Emergency Assistance program. But before I begin I would like to congratulate Senator Moynihan for his efforts to move welfare reform through the Senate. I look foward to working with him and his staff to pass meaningful welfare reform legislation in the 100th Congress.

Foster Care Independent Living Program

Maryland enthusiastically supported the creation of the Independent Living Program (PL 99-272) to coincide with the many programmatic improvements the State was initiating at that time. The program's conception was seen as a significant opportunity to close the gaping hole in services for foster care children making the transition into the adult world. For many young people, entering adulthood is difficult and sometimes frightening. But for foster care kids, who often lack the strong foundation that traditional families can provide, the challenges of the adult world are compounded. Without this program we can expect to see an increase in many problems already emerging within this population: homelessness, criminal behavior, emotional instability, and a life of poverty and institutional dependency.

These kids need this program. Society needs this program. And although scant emperical evidence exists to indicate the positive effects the federal funds have had on this program, we have seen first hand that these kids have been helped.

Maryland received its first year funding late in FFY 1987. And like other states scrambled to establish a comprehensive program with limited time to appropriate the funds.

Nonetheless, we have created a sound program from which to build. Maryland's program developed three primary objectives.

1. To implement a process to assess the needs of older adolescents in foster care, and implement individualized case plans to assist these youths' successful move from foster care to independence.

2. To train a cadre of foster care caseworkers and providers who are capable of assessing the needs of older adolescents, while providing the casework services to meet those needs.

3. To develop and have available a comprehensive range of independent living services and forms of assistance, which will aid older adolescents as they make the transition from foster care to independence.

During fiscal year 1988, the major portion of grant funds were allocated directly to the local departments of social service for the assessment of independent living service needs and for the development and provision of services specifically designed to meet those needs. Those services included: training in daily budgeting, career planning, vocational training, high school completion, peer support groups, individual and group counseling and resource and referral services. In addition, the department arranged for two foster teen conferences to be held in June and July of this year. The first conference was a great success, with 40 teens participating. The second conference is expected to be as equally successful.

Recent information indicates that there are 1343 Maryland youth between the age of 16 and 19 in foster care. Of this number, only 367 or 27% are IV-E eligible. The distribution of

Title IV-E eligible youth among Maryland's political jurisdictions shows a heavy concentration in the Baltimore and Washington metropolitan areas. More than eighty-five percent of all Title IV-E eligible youths are residents of only six of the state's twenty-four political jurisdictions. Almost fifty-four percent of the total IV-E eligible youth reside in Baltimore City.

Senator Moynihan's legislation, S. 2461, as well as provisions contained in HR 4333, would not only extend the life of this program, but also make necessary improvements. Maryland supports both of these initiatives which, if passed, would:

- reauthorize the program for an additional year;
- permit states to spend FY 87 carryover funds in FY 89;
- allow states to use funds to provide services to <u>all</u> children in foster care;
- provide for a transition period of independent living program eligibility for 6 months after the teens leave foster care; and
- change the dates for state report filing to January 1, 1989, and federal report filing to March 1, 1989.

Moveover, we support and believe that the committee should consider two additional provisions to strengthen the program by: (1) allowing states the option to claim independent living funds for services to children between the ages of 14 and 21, and (2) providing states with a multi-year commitment of federal funding so that we may properly plan for these children's future.

<u>AFDC Quality Control</u>

Maryland continues its efforts to improve the management and operation of the AFDC Program. We have demonstrated a "good faith effort" to reach the federal target error rates in spite of its questionable veracity. Maryland met the "good faith effort" requirements for the first sanction period in FY "81. During the subsequent fiscal years (82 and 83) Maryland's error rate dropped more than 50% from the FY '81 rate.

We are concerned, however, about being required to achieve an unrealistic standard and that the amount of erroneous payments computed by our office may not be an accurate reflection of payment errors. As the system currently exists, errors are assigned to technical criteria having no direct bearing on financial need. The system holds states liable for client errors over which administrators and case workers have no control. These client caused errors account for 64 percent of Maryland's total error rate.

During consideration of the 1985 Reconciliation Act the Senate Finance Committee adopted provisions calling for the National Academy of Sciences to conduct a comprehensive review of The AFDC quality control system and for a two year moratorium to be placed on the collection of AFDC quality control sanctions. The study was completed by the National Academy of Sciences this spring. The moratorium expired earlier this month.

The National Academy of Sciences confirmed what states have contended and this committee has long understood: the present AFDC quality control system produces state performance measures that are neither accurate nor equitable.

According to the American Public Welfare Association, the National AFDC error rate dropped more than 50% from 16.5% in 1975 to 6.5% in 1985. Yet, the number of states liable for sanctions has increased and the potential liabilities continue to grow.

APWA also reports that under current sanction policies forty nine states face quality control sanctions totaling nearly $600 million in the AFDC program for fiscal years 81-84. Maryland alone is considered liable for over $5.572 million for these years.

The National Academy of Sciences pointed to these statistics as an indicator of a quality control system that is in desperate need of reform--comprehensive reform. The NAS recommendations are consistent with states views and are incorporated into

legislation introduced by Senator Evans earlier this month (S.2522).

Given the very tight Congressional schedule, I understand that comprehensive reform of the AFDC quality control system this session is improbable. However, this subcommittee is interested in prohibiting any further movement on sanction collection.

Just as Senator Moynihan and others have worked tirelessly to strengthen our country's commitment to the poor, the quality control system looms as a large and formidable threat to the integrity of these programs and the services they provide to those in need.

Instead of strengthening the AFDC program, punitive fiscal sanctions may well force states to curtail benefits or client services, as well as the very administrative improvements needed to reduce errors. These results, of course, are the opposite of what the quality control program is supposed to accomplish. And they are exacerbated when you consider that the same quality control problems exist in the Medicaid and Food Stamp programs.

Short of comprehensive reform I urge Congress to extend the moratorium on the collection of AFDC quality control sanctions for one year.

By extending the moratorium Congress acknowledges the powerful findings of the National Academy of Sciences, reiterates its distrust of the current process, protects the integrity of the AFDC program, and forces revisiting of the issue next year. Although we will be without the strong leadership of Senator Evans on this issue next year, Maryland as well as other states believe comprehensive reform should be based on S. 2522.

AFDC Emergency Assistance Program

On December 14, 1987, the U.S. Department of Health and Human Services issued proposed regulations to the AFDC Emergency Assistance program. Maryland responded by written comment to HHS in January, 1988.

In particular, we were concerned about the serious damage that would be done by restricting Title IV-A Emergency Assistance payments to cover no more than 30 days of need. In our response we emphasized that,

> "The proposed change could gut the very intent and operation of this vital program for two reasons: first, many evictions and gas and electric shut-offs (which comprise the majority of Maryland's emergency payments), cover rent or utility service of more than 30 days. Second, usually a minimum amount is required to "resolve" the emergency, and even this minimum amount often exceeds 30 days of service. In addition, the administrative burden of trying to "chop" the eviction notice or utility bill into a 30 day segment would not only be extremely difficult and time-consuming it could slow down a crisis-oriented system that must operate "forthwith."

We went on to say that although there may be cause to limit specific excesses in this program, a broad-brush approach as embodied in the proposed regulation would devastate state's efforts to use emergency funds to maintain their safety net for life-threatening emergencies.

Since the time of the issuance of the proposed regulation, numerous legislative correcting measures have been introduced. First and foremost, Maryland believes that the moratorium on the implementation of the regulation should be extended for at least six months beyond the expiration date of September 30, 1988. The six month extension would allow Congress the opportunity to adopt legislation to correct any specific problems present in the program without being detrimental to a state's ability to provide emergency assistance. Specifically, we believe Congress should pass HR 3366, which would:

- -- provide simultaneous multi-shelter allowances or special need allowances to reflect differences in the types of housing in which the recipients reside;
- -- remove the 30-day limit on emergency assistance insofar as it involves shelter; and
- -- make it clear that a State need not specify the maximum amounts of assistance to be provided for the various types of emergency identified in the State plan.

In addition, we believe that strong consideration should be given to legislation introduced by Senator Moynihan, S. 37. This bill would authorize grants to States for the construction or rehabilitation of permanent housing for AFDC families.

Mr. Chairman, I thank you again for this opportunity to share Maryland's views on these important issues.

Presented by Robert A. Horel

Deputy Director

Welfare Programs Division

California Department of Social Services

Mr. Chairman, members of the subcommittee, my name is Robert Horel and I am the Deputy Director of the Welfare Programs Division for the California Department of Social Services. I appreciate the opportunity to speak to two areas of major concern to California. These are:

1. An extension of the moratorium on the Department of Health and Human Services' (DHHS) proposed rule to prohibit States from providing a special need based on the type of housing occupied.

2. An extension of the moratorium on the collection of AFDC sanction liability dollars pending true reform of the Federal quality control/sanction system.

MORATORIUM ON PROPOSED RULE TO AMEND SPECIAL NEEDS REGULATIONS

California strongly urges extension of the moratorium on the DHHS' proposed rule, published in the Federal Register dated December 14, 1987 regarding "Proposed Regulatory Changes to the AFDC, Adult Assistance and Emergency Assistance Programs." We are particularly concerned with the proposed rule which would prohibit States from providing a special need based on the type of housing occupied. The proposed regulations would impose unreasonable restrictions on a State's ability to appropriately use the AFDC special needs provision as provided for in existing Federal regulations.

Section 406 of the Social Security Act addresses payments with respect to needy dependent children and certain individuals living with them. Congress was clear in enacting the Social Security Act that States were to possess the authority to set benefit levels and the standard of need. This includes payments for special needs.

The AFDC program is designed to meet the basic needs of applicants and recipients. Shelter is recognized as one of these needs. Federal law and regulations are written to grant States flexibility in meeting the needs of its AFDC populations. DHHS' proposed rule, which could be interpreted to prohibit homeless assistance from being granted as part of the basic grant or as a nonrecurring special need, violates the intent of Federal law.

On February 1, 1988 California implemented a nonrecurring special need to provide homeless assistance to homeless AFDC families. Although it is too soon to provide a complete evaluation of the effectiveness of these payments, we believe that the new provisions are successfully meeting the needs of homeless AFDC families by allowing them to secure housing and provide a stable living environment for their dependent children.
The Preamble to the proposed DHHS rule clearly indicates that the special need is not to be used to assist a homeless family. The Preamble states, "...we propose these amendments regarding...special need allowances for shelter. The regulations would clarify that such allowances are not permissible under the AFDC program." However, the first paragraph of the Preamble acknowledges that, "Federal policy has long recognized that this need standard includes the costs of basic needs recognized as essential for all applicants and recipients. Generally included are everyday items such as...shelter." DHHS agrees that shelter is a basic need. Therefore, if a family is without shelter, it

has a basic need being unmet; the only mechanism available within the program to meet needs not common to the majority of recipients is the special need.

DHHS' proposed rule severely reduces a State's flexibility to address emergency situations, such as a lack of housing. Furthermore, it is in conflict with the basic program tenet that recognizes shelter as an essential part of the need standard.

In summary, California urges extension of the moratorium until at least February 1, 1989, for the following reasons:

- California's nonrecurring special need for homeless assistance will have been effective for one year. This would be a reasonable amount of time upon which to determine the effectiveness of the special need in assisting homeless AFDC families. If the moratorium is ended it is likely that the DHHS proposed rule will become effective and California's innovative effort to help homeless families will become obsolete before it has had a chance to be fairly tested.

- Homelessness continues to be one of the most pressing domestic issues and must be effectively addressed at the State and national levels. The AFDC Program is designed to meet the basic needs of families and, under current law and regulations, has the flexibility to allow States to address a variety of needs.

- It seems fair and reasonable to allow the new administration an opportunity to review the homeless issue and the far-reaching effects of the DHHS proposed rule on this issue before ending the moratorium. It is California's belief that the DHHS proposed rule will shut down all efforts to provide shelter assistance to eligible AFDC families.

MORATORIUM ON COLLECTION OF AFDC SANCTION LIABILITY DOLLARS

California strongly supports the extension of the moratorium on the collection of AFDC sanction liability dollars pending true reform of the Federal quality control/sanction system. We do so recognizing that the extension of the moratorium is only a stopgap measure which addresses the symptom rather than the root of the problem - the weaknesses of the quality control/sanction system under which we now must operate. However, it is essential that the AFDC program be allowed to operate without the disruptive threat of sanctions while work continues on substantive system reform. Extension of the moratorium will not solve the problems associated with the existing system. By allowing the continuing operation of an unjust, inequitable system which is structured to find States out of compliance, additional sanctions continue to accrue without resolution.

We recognize that there are many sides to the discussion concerning the degree of validity of the existing system. The United States Department of Health and Human Services (DHHS) feels that the current system is fair and equitable while the National Academy of Sciences, the United States General Accounting Office, the States and many others feel that a whole new system needs to be developed.

The belief - which we in California share - that a new system is needed results from the following facts:

- the current system contains unrealistic standards of performance under which over 98% of States have been sanctioned to date.
- State-to-State socioeconomic, caseload, and programmatic differences are disregarded so that there is no recognition of differing rates of unemployment, caseload size, and client

mobility, or degree of client sophistication and awareness about the welfare system. Additionally, a State is penalized for adopting more program options to serve its residents as this results in a more complex and therefore more error-prone program.

- unsound statistical sampling and analytical techniques are relied on to estimate error rates. Many experts question the validity of a regression and rereview formula which can, as happened in California, result in one case error adding eight million dollars to a sanction liability.

- cost-effectiveness factors related to error reduction are ignored. A recent study by the DHHS, Office of Inspector General found that implementing the multitude of smaller corrective actions which are now needed to "fine tune" program management to maintain error rate targets would probably cost more than the errors they are designed to prevent.

- the impact of client-caused errors, over which the administering agency has little or no control, is not taken into account.

- the system is viewed as a potential source of funds for balancing the Federal budget through the collection of sanction liabilities. While the Federal bureaucracy may view this as a windfall to cover other commitments, States view these funds as monies already expended in good faith to provide needed services.

- Federal release of final case review data lags so far behind (about two years) that when it becomes available it is of little or no use for corrective action purposes. So.

ironically, even if we thought that everything else connected with this system were acceptable, the bottom line is that it cannot do what it is supposed to do - assist States in corrective action and error reduction - because of the delay in reporting its findings back to the program administrators.

Because of the numerous and fundamental problems mentioned concerning the current system, we urge you to extend the moratorium, but to also quickly go on from there to conclude the process started by your creation of the NAS study of ways to reform the quality control/sanction system. The next necessary step is for you to mandate specific reforms which will allow the States to work in partnership with the Federal government to effectively provide services to the needy.

Independent Living Program

I would also like to take the opportunity to encourage continued funding for the Independent Living Program. The Department of Social Services is responsible for the administration of the Independent Living Initiative authorized by the Consolidated Omnibus Budget Reconciliation Act of 1985. This program assists Federally-eligible Foster Care children over age 16 in making the transition from foster care to independent living, a need not adequately addressed in the past.

California believes that continued funding of the Independent Living Initiative is necessary and appropriate. We hope to provide services to over 5,000 Federally-eligible youth each year. This program will prove to be cost effective and will enable the youth more easily to enter the labor market and become productive, contributing members of society. We anticipate that the youth, by achieving a marketable skill, will gain employment and thereby eliminate the need to rely on the public welfare system.

WAYNE A. STANTON
ADMINISTRATOR
FAMILY SUPPORT ADMINISTRATION

Mr. Chairman, I am pleased to have the opportunity to explain the regulations we have proposed to restrict Federal funding, under the regular AFDC program and the Emergency Assistance program, for "welfare hotels" and other types of emergency shelter.

The proposed regulations were developed to curtail growing abuses under these programs. They contain three major provisions.

The first provision states that Federal matching funds for the Emergency Assistance program are available for only 30 days' worth of needs in any period of twelve consecutive months. This provision would ensure that States implement our regulations consistent with the purposes set forth in the Social Security Act for the Emergency Assistance program -- that is, State agencies would be able to act quickly to provide families with children with short-term assistance and/or services to meet needs arising from emergencies. As a result of such early intervention, some families would not thereafter need to receive assistance under ongoing programs. Those families needing ongoing assistance would have their needs met for a temporary period under the Emergency Assistance program while their eligibility for continued assistance was being determined. Under the broad interpretation of existing regulations taken by some States, it has not been uncommon for families to receive "emergency" assistance for periods in excess of one year. Obviously, assistance provided over such extended periods of time cannot be considered short-term. Thus, current State practices violate the intent of the Emergency Assistance program.

The second provision prohibits differential needs standards or inclusion of special needs allowances under the AFDC program, based on the type of housing. It was included because States have been manipulating their needs standards in order to obtain extra Federal funding for city and State shelter programs (including rehabilitation). It is inappropriate to use welfare funds for housing in order to circumvent shortages in housing funds. Furthermore, it is inequitable to establish differential standards or special needs allowances which serve to ensure that housing costs of those within a city's shelter system are fully met, when the basic shelter allowance may not fully cover shelter costs for those who must fend for themselves in privately secured shelter.

For example, a State may pay $1500 a month for shelter costs of those in emergency shelters, but only $300 a month for those in regular, privately-secured apartments. The $1500 amount is set to cover the full costs of emergency shelter arrangements, under terms of a contract between the city and the shelter, but the $300 amount does not necessarily cover the shelter costs for families living in a typical apartment. If the shelter costs of these latter families exceed the $300 shelter amount, they would be forced to spend an additional portion of their assistance on shelter -- having less assistance to meet non-shelter needs. To the extent this happens, the needs of families outside the city shelter system are not being met to the same extent as are the needs of those in the shelter system. Thus, these differential needs standards result in inequitable treatment of families, based on the type of housing they occupy. They, therefore, are not acceptable under longstanding principles of the program.

The third provision requires States to specify the maximum amount of assistance that can be provided to meet each kind of emergency. The lack of such a requirement in current rules makes it virtually impossible for us to ensure the proper and efficient administration of the program -- as required under section 402(a)(5) of the Social Security Act. It makes it much more difficult to monitor State expenditures or to challenge extraordinary expenditures for facilities like "welfare hotels." Thus, it ties my hands when I try to exercise my fiduciary responsibilities as administrator of the program and to serve the public trust.

I can assure you that the purpose of these regulations is not to abuse poor people, but to ensure: 1) that the AFDC and Emergency Assistance programs are properly administered; and 2) that States do not subvert the intent of the programs in order to circumvent Congressionally-mandated funding limitations for housing. Housing and shelters should be funded through housing programs, not welfare programs.

I also think it is very important for us all to acknowledge that the proposals Congress is considering for changes to AFDC and EA shelter rules -- including the extension of the current moratorium and various demonstration proposals -- have significant cost implications. Although technically Congress can consider these proposals cost-neutral, the proposals uniformly accept current abusive expenditures as a baseline. They allow States to continue, and even expand, their misuse of Emergency Assistance funds.

If recent trends continue, millions of dollars in additional expenditures would result. For example, between 1982 and 1986, EA expenditures rose almost $70 million dollars, a 65 percent

increase -- 5 times faster than the rate of inflation. In New York alone, expenditures over this period rose 84 percent. Thus, if Congress prevents us from restoring integrity to the administration of these programs or otherwise accepts the abuses in spending being perpetrated under the current system, millions of dollars in additional expenditures will be incurred. We estimate that the moratorium on issuance of our proposed regulations carries an annual cost of $85 million.

I strongly urge you not to enact any further moratorium on our proposed regulations addressing the Emergency Assistance program and the special needs provisions of the AFDC program. We have received many public comments, which my staff currently is analyzing prior to completion of the final regulation. Allow me to do my job -- respond to public comments -- and to complete a regulation which will require more responsible administration of these programs.

Thank you.

STATE OF NEBRASKA
DEPARTMENT OF SOCIAL SERVICES
KAY A. ORR
GOVERNOR
KERMIT R. McMURRY
DIRECTOR

July 29, 1988

Senator Daniel P. Moynihan, Chairman
Senate Finance Subcommittee on
Social Security and Family Policy
United States Senate
205 Dirksen Building
Washington, D.C. 20510

Dear Sir:

I support your committee's proposal to require the Social Security Administration to provide periodic statements to covered workers regarding Social Security taxes that they have paid and benefits that they can expect to receive. Workers would have more confidence in Social Security if they were able to monitor their potential benefits.

I am aware of instances where an individual's contribution to Social Security was recorded incorrectly, thus resulting in loss of benefits to the retiree. Such errors can force an otherwise self-sufficient individual to seek public assistance.

As a public official, I am cognizant of the need for confidence in our institutions; to foster this confidence, our institutions need to be accountable to the citizens. This notice provision is a positive step in fostering that confidence.

Sincerely,

Kermit R. McMurry, Director
Nebraska Department of Social Services

SS:KK82090

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Topic: SSA's proposal to amend the rule for correction of self-employment earnings records

Introduction

The purpose of this statement is to address one of the four proposals submitted by the Social Security Administration which are being considered by the Committee at this hearing. The SSA proposal would severely curtail the already limited ability of self-employed individuals to correct their earnings records after the expiration of the statutory time period (three years, three months, and fifteen days.) It would make it much more difficult for them to receive credit for their work.

42 U.S.C. §405(c)(5)(F) currently permits the correction of any person's earnings record after the expiration of the statutory time period if the correction is needed:

> "(F) to conform his records to
>
> (i) tax returns or portions thereof (including information returns and other written statements) filed with the Commissioner of Internal Revenue...
>
> * * * * *
>
> Except that no amount of self-employment income of an individual for any taxable year (if such return or statement was filed after the expiration of the time limitation following the taxable year) shall be included in the Secretary's records pursuant to this subparagraph."

Under the Social Security Administration's proposal, §405(c) (5)(F) would be amended to change the language following "except that" set forth above:

> "Except that self-employment income of an individual for a taxable year may be included in the Secretary's records pursuant to this subparagraph only to conform such records to a self-employment tax return filed (pursuant to section 6017 of the Internal Revenue Code of 1986 or the applicable provision of the Internal Revenue Code of 1939 or 1954 that provided for the filing of such self-employment tax returns) by or on behalf of such individual for such taxable year within the time limitation following such taxable year."

The SSA proposed language would place the following limits on the ability of a self-employed individual to correct his/her earnings records after the statutory period of three years, three months and fifteen days by use of a tax return: (1) the return must have been filed "within the time limitation following such taxable year"; (2) the return that was filed must have been for self-employment income; and (3) the return must have been filed "on or behalf of such individual." As will be discussed below, the effects of these limitations are far more significant than SSA has portrayed them. In addition, they are unnecessary to the administration of the program. There is no justification for passing a provision such as this which will create so much harm for small business people while merely creating a convenience for SSA.

Limitation #1: the return must have been filed "within the time limitation following such taxable year."

Review of the facts as well as the judicial decisions in two circuit court cases suggest the problems that will be created by SSA's proposed rule. In Hollman v. Department of HHS, 696 F.2d 13 (2d Cir. 1982), a New York resident sought recalculation of his benefit level so that it would include his self-employment earnings. The IRS had audited his return and disallowed some business deductions he had taken. As a result, he had to pay additional Social Security and income taxes. SSA refused to correct his earnings record on the grounds that the time limitation for correction of records had passed. The Second Circuit, reading §405(c)(5)(F), the provision which SSA proposes to amend, held that SSA's decision was "an abuse of discretion and an error of law." [The court also held that SSA is mandated to credit the earnings under §405(c)(4)(C), which refers specifically to a return filed for self-employment income. However, SSA apparently does not read that section that way.]

In Gardner v. Heckler, 777 F.2d 987 (5th Cir. 1985), the plaintiff filed an amended return while his appeal from the Secretary's decision denying benefits for less than adequate quarters of coverage was pending. He presented the ALJ with the "1977 amended return, as well as Gardner's business records for that year and an affidavit by [his CPA] stating that she had prepared the 1977 return in conformance with the Internal Revenue Code, standard accounting procedures, and the Code of Ethics for CPAs." The ALJ rejected the amended record on the grounds that it was suspect because it had been filed at a time when the claimant was seeking to establish additional quarters of coverage in order to establish eligibility for benefits. The Fifth Circuit reversed:

> Such motives may indeed create a duty of vigilance on the part of the Secretary to protect the integrity of the Social Security program. We cannot fathom, however, how Gardner's interest in obtaining benefits makes his amended return presumptively less credible than any other representation made by anyone seeking government benefits.

The court noted that the plaintiff had filed an affidavit from his CPA and the records she used in calculating the taxes: "...Gardner's Greenwood Ledger, his receipts, invoices, and checks. Unless manufactured (and there is not a scintilla of evidence that they were), these records are much more credible than Gardner's original return." The court concluded that "Absent a finding that Gardner's records were not authentic or did not substantiate the amended return, the ALJ had a duty to grant insured status to Gardner." [Apparently, SSA believes that it would be rid of this requirement that it look at records if it never had to consider an amended return unless it was filed within the statutory time frame for correcting records.]

It appears that SSA believes that the proposed language would relieve it of any obligation to consider amended returns (if not filed within three years, three months, and fifteen days) as well as underlying records offered by a claimant to establish the veracity of the return. This ignores the realities of being a self-employed person. The rules for reporting income are much more complex for self-employed persons. It is probably reasonable to expect that there would be more returns that would require amendment. (It is also possible that the IRS audits a higher percentage of these returns due to the higher probability of error.)

Limitation #2: The return that was filed must have been for self-employment income.

In Hollman, the Second Circuit reviewed the facts of a number of decisions in which the courts permitted correction of the record "even in the absence of timely initial self-employment social security record entries."

> In Maloney v. Celebrezze, 230 F. Supp. 222 (N.D. Ohio 1964), a blind commission salesman used a Form 1040A on advice of and IRS clerk, rather than a 1040 with supplemental Schedule SE, and filed an amended tax return five years later. In Ellis v. Gardner, 304 F. Supp. 765 (E.D.Pa. 1969), the retiree's accountant listed sale of her business as a long-term capital gain, which IRS subsequently determined properly to be self-employment income. In North v. Califano, [1978 Transfer Binder] Unempl. Ins. Rep.(CCH) 15,720 (D.Minn. 1978), the claimant had timely filed tax returns for 1962-64, reporting certain sales proceeds as long term capital gains, which the IRS determined after audit to be self-employment income. The court held that the Secretary could conform his records to the portions of North's original tax return reporting capital gains under the exception stated in 42 U.S.C. §405(c)(5)(F).

By changing the language to limit amended tax returns to only those where the person originally filed a self-employment return, SSA would be precluding small business people like Maloney, Ellis, and North from ever receiving credit for their earnings simply because they made a mistake in how they originally characterized their income when they

reported it. There are very strong arguments that when the Congress extended Social Security to self-employed income, it did so very cautiously. It would be ironic to now limit the ability to credit earnings further. There must be a balancing between SSA's interest in having reporting be as clean and simple as possible and the reality that there is a great deal of confusion among the self-employed (and their advisers) about how income is characterized and how it is to be reported.

Limitation #3: The return must have been filed by or on behalf of the individual.

This sounds relatively harmless but, in fact, could create serious problems for at least two groups of individuals. Until 1980, SSA applied §211(a)(5)(A) of the Act, 42 U.S.C. §411(a)(5)(A). This provision said that in crediting the self-employment earnings of a married couple residing a community property state who operated a business together (but who did not operate as a partnership), SSA was to credit all of the earnings to the husband, unless the wife could show that she exercised substantially all of the management and control of the business. The result was that many women did not receive earnings credits to which they were constitutionally entitled.After a few lawsuits, SSA and the Attorney General agreed that the provision was unconstitutional. The issue then became what relief women who had all of these "zero years" of earnings were entitled to receive. In Edwards v. Heckler, 789 F.2d 659 (9th Cir. 1985), the Ninth Circuit upheld the relief awarded by the district court. One aspect of that relief is that a wife could seek to have earnings transferred from her husband's earnings record to her own if, in fact, they were her earnings. While SSA changed its rule about crediting these earnings prospectively, there are women who will first become disabled or retire for the next couple decades who will have the results of the unconstitutional provision built into their earnings records (for the years prior to 1980). They will need to be able to get their earnings off of their husbands' records. This will not involve returns filed "by or on behalf of such individual" as the SSA proposal would require. [They also would not have filed a joint return, which might be covered by the SSA language, because the IRS had a similar rule which required that the husband report all of the income as his during this period.]

In addition to women in community property states, there is another category of women who are very similarly situated who reside in all of the other states. They tend to be women who have run farms or other very small businesses, such as corner grocery stores and gas stations, with their husbands. [Around 1984, SSA amended the POMS section which defines partnerships to make it much broader and to recognize that agreements of partnership between a husband and wife need not necessarily be in writing nor even have been oral. So, it is possible that the problem described will begin to disappear in a few years. However, it is still very much a problem in terms of past earnings which a woman will not know she has not had credited until she goes to apply for disability or retirement in future years and is denied due to lack of adequate quarters of coverage.]

The problem is that, for years, SSA has had basically the same rule in non-community property states that it used

in community property states. Rather than distributing income on a pro-rata basis between the couple, SSA simply credits all of the earnings to the spouse who exercises more of the control. Traditionally, this has been viewed as being the husband. As a result, there are many women who will need to look to their husbands' tax forms in order to have any chance to correct their records based on self-employment income. Under SSA's language, their ability to do this would turn completely on whether the woman and her husband had filed their tax returns jointly or separately. (While it is not clear, it seems possible that one could argue that at least joint returns would be covered under SSA's proposed language.)

There probably are other people, in addition to women on small farms and in small businesses, who will also be hurt by this proposal. However, this group alone is so significant, particularly in terms of their need for disability and survivors coverage (the latter for their spouse and children), that a provision like this should not be considered.

Recommendation

There is no justification for the SSA proposal. While it should not be enacted, there are at least two alternative solutions that should be considered.

First, as the cases discussed above reflect, SSA already makes it very difficult for self-employed individuals to correct their earnings records under the current statutory language. It would be very helpful and also would eliminate some of the confusion if the statutory language was amended to reflect the more realistic and reasonable interpretation which the courts already apply.

Second, the issue raised here is just one of many problems which self-employed individuals have in determining how to properly report their income for SSA purposes, in having their earnings credited, and in understanding when they are considered to be retired for SSA's purposes. In addition, as has been discussed briefly here, women still face serious problems in having their earnings credited to their records if they work with their husbands. In some cases, it is simply a matter of not knowing the proper way to categorize their work relationship or that there is significance to how it is categorized. While it is not likely that this Committee would be able to address these issues at this point in this Congress, they are worthy of the Committee's attention in the future. It would be better to delay any action on the SSA proposal until such time as more attention can be given to the complete set of problems. At that time, the Committee could consider what statutory changes should be made as well as ways in which the Secretary (and the IRS) could better assist self-employed individuals in assuring that they receive complete credit for all of their earnings.

Thank you for considering this statement.

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